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Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW011; Special Conditions No. 29–011–SC]

Special Conditions: Sikorsky Aircraft Corporation Model S–92A Helicopter; Use of a Dual-Engine 30-Minute Power Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. The S–92A helicopters will have an unusual feature associated with the use of a dual-engine 30-minute power rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for use of this power rating. These special conditions contain the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained during use of this rating.

DATES: The effective date of these special conditions is October 16, 2002. Comments must be received on or before December 30, 2002.

ADDRESSES: Comments on these special conditions should be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Regional Counsel, Attention: Rules Docket No. SW011, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked Docket No. SW011. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m. The Rules Docket for special conditions is maintained at the Federal Aviation Administration, Rotorcraft Directorate, 2601 Meacham Blvd., Room 448, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, FAA, Rotorcraft Directorate, Rotorcraft Standards, Fort Worth, Texas 76193–0110, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected helicopter. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, views, or data. Communications should identify the regulatory docket and be submitted in duplicate to the address specified above. We will consider all comments we receive on or before the closing date for comments. We may change these special conditions in light of the comments we receive. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. If you want the FAA to acknowledge receipt of your comments on this proposal, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

For the Model S–92A helicopter, Sikorsky Aircraft Corporation has applied for use of a dual-engine 30-minute power rating in addition to a maximum continuous power rating. The Sikorsky Model S–92A is a transport category A and B rotorcraft, powered by two General Electric CT7–8 engines certificated with a dual-engine 30-minute power rating greater than the maximum continuous power rating. The S–92A with the CT7–8 engine installation will have 30-Second One-Engine-Inoperative (OEI), 2-Minute OEI, Continuous OEI, 30-Minute, Takeoff, and Maximum Continuous power ratings.

This unusual dual-engine power capability must be limited to use for hovering operations only for periods not to exceed 30 minutes at any time after takeoff, to allow the rotorcraft to fly extended hover maneuvers while performing search and rescue missions. However, this rating is also suitable for other missions that require increased rotorcraft hovering capability and duration, beyond those that the maximum continuous engine rating allows.

The S–92A has the same engine torque and rotor speed limits for use of aircraft 30-minute power or maximum continuous power ratings. As a result, the FAA has determined that compliance with the structural and drive system requirements of 14 CFR part 29 (part 29) has not been affected by the 30-minute rating application.

The applicable airworthiness requirements do not contain a 30-minute power rating definition and do not contain adequate or appropriate safety standards for the type certification of this unusual engine rating. Due to increased engine N_1 (gas turbine speed) and $T_{4.5}$ (power turbine inlet temperature) limits for this new rating, as compared to the existing continuous rating, airworthiness requirements must be specified for powerplant cooling and operational limitations for this novel or unusual design feature.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Sikorsky Aircraft Corporation must show that the Model S–92A helicopter meets the applicable provisions of the regulations as follows:

- 14 CFR Part 29, Amendment 29–1 through Amendment 29–45, inclusive;
- 14 CFR Part 29, Appendix H, Amendments 36–1 through the amendment effective at the time of certification; and
- Any special conditions, exemptions, and equivalent safety findings deemed necessary.

If the Administrator finds that the applicable airworthiness regulations for part 29 do not contain adequate or appropriate safety standards for the Sikorsky Model S–92A because of a novel or unusual design feature, special

conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sikorsky Model S–92A must comply with the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are defined in § 11.19, and issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the TC for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same TC be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Sikorsky Model S–92A will incorporate the following novel or unusual design features: A dual-engine 30-minute power rating which will require a special condition for hovering cooling test procedures and powerplant limitations.

Applicability

As discussed above, these special conditions are applicable to the Sikorsky Model S–92A. Should Sikorsky Aircraft Corporation apply at a later date for a change to the TC to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register;** however, as the certification date for the Sikorsky Model S–92A is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Sikorsky Model S–92A helicopters.

1. Hovering Cooling Test Procedures

Acceptable hovering cooling provisions must be shown for the following conditions, which replace the requirements of § 29.1049:

(a) At the maximum weight, or at the greatest weight at which the rotorcraft can hover (if less), at sea level, with the power required to hover but not more than 30-minute power, in-ground effect with the maximum tailwind velocity and azimuths requested for approval, until at least 5 minutes after the occurrence of the highest temperature recorded or until the expiration of the 30-minute power application period, whichever occurs first; and,

(b) With 30-minute power, maximum weight, and at the altitude resulting in zero rate of climb for this configuration, until at least 5 minutes after the occurrence of the highest temperature recorded or until the expiration of the 30-minute power application period, whichever occurs first.

2. Powerplant Limitations

In addition to the requirements of § 29.1521 the limitations for rated 30-minute power usage must be established as follows:

Rated 30-Minute Power Operations

The powerplant rated 30-minute power operation must be limited to use for periods not to exceed 30 minutes for hovering operations only and limited by:

(a) The maximum rotational speed which may not be greater than

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests;

(b) The maximum allowable power turbine inlet gas temperature;

(c) The maximum allowable engine and transmission oil temperatures.

(d) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating; and

(e) The maximum allowable power or torque for each engine considering the power input limitations of the transmission with one-engine-inoperative.

Issued in Fort Worth, Texas, on October 16, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service, ASW–100.

[FR Doc. 02–27378 Filed 10–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–4]

Establishment of Class D Airspace; Greenville Donaldson Center, SC, Amendment of Class E2 Airspace; Greer, Greenville-Spartanburg Airport SC, and Amendment of Class E5 Airspace; Greenville, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays indefinitely the establishment of Class D airspace at Greenville Donaldson Center, SC, the amendment of Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the amendment of Class E5 airspace at Greenville, SC. The construction of a new federal contract tower with a weather reporting system has been delayed, with an uncertain completion date; therefore, the effective date of the establishment of Class D airspace and amendment of Class E airspace must also be delayed indefinitely.

EFFECTIVE DATE: The effective date of the final rule published May 1, 2002, at 67 FR 21575 (0901 UTC, November 28, 2002) is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 02–ASO–04, published in the **Federal Register** on May 1, 2002, (67 FR 21575), established Class D airspace at Greenville

Donaldson Center, SC, amended Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and amended Class E5 airspace at Greenville, SC. The construction of a federal contract tower with a weather reporting system at Donaldson Center Airport made this action necessary. This action was originally scheduled to become effective on November 28, 2002; however, an unforeseen delay in beginning construction on the tower has required the effective date of this action to be delayed. Construction is now scheduled to begin in January 2003, with an anticipated date of September 2003. A notice announcing a new effective date will be published in the **Federal Register** at least 90 days prior to the new effective date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date on Airspace Docket No. 02–ASO–04 is hereby delayed indefinitely.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

* * * * *

Issued in College Park, Georgia, on October 17, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–27174 Filed 10–28–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0367; FRL–7396–3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Ventura County Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 25, 2002 and concerns volatile organic compound (VOC) emissions from gasoline dispensing facilities. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate this emission source and directs California to correct rule deficiencies.

EPA is also finalizing the full approval of a revision to the Santa Barbara County Air Pollution Control District portion of the California SIP regarding organic liquid cargo vessels.

EFFECTIVE DATE: This rule is effective on November 29, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On April 25, 2002 (67 FR 20478), we proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule #	Rule title	Revised	Submitted
ICAPCD	415	Transfer and Storage of Gasoline	09/14/99	05/26/00
VCAPCD	70	Storage and Transfer of Gasoline	11/14/00	05/08/01

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the CAA. Our proposed action contains more information on the rules and our evaluation.

On April 25, 2002 (67 FR 20478), we also proposed a full approval of the following rule that was submitted for incorporation into the California SIP.

TABLE 2.—SUBMITTED RULE

Local Agency	Rule #	Rule Title	Revised	Submitted
SBCAPCD	346	Loading of Organic Liquid Cargo Vessels	01/18/01	05/08/01

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Richard H. Baldwin, Ventura County Air Pollution Control District, letter dated May 28, 2002 and received May 28, 2002. The comments and our responses are summarized below.

Comment 1: EPA's proposed rulemaking states that Rule 70 is deficient because, ''Reverification of the performance tests of the vapor recovery system * * * should be performed more frequently * * * in order to fulfill RACT.'' For a variety of reasons, the commenter believes that this deficiency is more stringent than that required by RACT.

Response 1: RACT generally refers largely to direct emission control requirements such as emission limits. Monitoring, reporting, recordkeeping, and similar requirements designed to ensure compliance with control requirements are sometimes also referred to as components of RACT, but often considered simply enforceability elements necessary to fulfill the general CAA 110(a)(2) enforceability requirement. We agree with the commenter that the control requirements in Rule 70 meet or exceed RACT. However, we should have identified the rule deficiency more clearly as an enforceability issue because, as described in our proposal action and associated TSD, we believe the existing performance test requirements do not adequately ensure continued compliance with the control requirements.

Comment 2: South Coast AQMD is the only California District that currently contains reverification of performance test requirements sufficient to address EPA's proposed limited disapproval. EPA should not define RACT based on the single most stringent adopted rule.

Response 2: EPA is not using the more stringent South Coast requirements as the primary basis for disapproving Rule 70. Rather, as discussed in our proposed action, we are relying on the research, performed by the California Air Pollution Control Officer's Association (CAPCOA), CARB, and others, which shows that existing Rule 70 reverification of performance test requirements do not adequately ensure compliance with the rule's control requirements. *See also* Response 1.

Comment 3: EPA should approve the submitted version of Rule 70 as meeting RACT requirements.

Response 3: We concur that Rule 70 meets or exceeds the RACT control requirements. We do not believe, however, that the reverification of performance test requirements adequately fulfill section 110(a)(2) enforceability requirements. *See also* Response 1.

Comment 4: EPA Region IX's guidelines for evaluating vapor recovery rules are inappropriately more stringent in California than in other states.

Response 4: The guidelines distinguish requirements in California from requirements in other states because of the unique role that CARB plays in regulating vapor recovery. We believe, however, that the substance of our guidelines is the same for California and other states.

Comment 5: The rule improvement identified by EPA is not relied upon in Ventura's approved attainment demonstration.

Response 5: Improved reverification of performance test requirements are not intended to directly yield emission reductions that would be incorporated in an attainment demonstration. They are intended to assure that control requirements contained in Rule 70, which are relied on in Ventura's attainment demonstration, are in fact achieved.

Comment 6: RACT should be determined on a national, not a regional basis.

Response 6: Reasonably available controls can vary somewhat based on local economic and other factors. See also Response 1.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of VCAPCD Rule 70. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of VCAPCD Rule 70. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act as described in 59 FR 39832 (August 4, 1994). In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of ICAPCD Rule 415. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of ICAPCD Rule 415. No sanctions are associated with this action because this is not a required submittal.

Note that the submitted rules have been adopted by the VCAPCD and ICAPCD, and EPA's final limited disapproval does not prevent the local agencies from enforcing them.

As authorized in sections 110(k)(3) of the CAA, EPA is finalizing a full approval of SBCAPCD Rule 346. This action incorporates the submitted rule into the California SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it

does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 1, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(279)(i)(A)(*9*), (284)(i)(C)(*2*), and (284)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*9*) Rule 415, adopted on September 14, 1999.

* * * * *

(284) * * *

(i) * * *

(C) * * *

(*2*) Rule 346, adopted on January 18, 2001.

(D) Ventura County Air Pollution Control District.

(*2*) Rule 70, adopted on November 14, 2000.

* * * * *

[FR Doc. 02–27343 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7390–6]

RIN 2040–AD72

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water; Revisions to EPA Method 1631

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves EPA Method 1631, Revision E: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (Method 1631E) for determination of mercury in aqueous samples. Today's rule replaces the currently approved version of Method 1631 and includes revisions that address stakeholder concerns. EPA Method 1631E clarifies quality control and sample handling requirements and allows flexibility to incorporate additional available technologies. This rule also amends the requirements regarding preservation, storage, and holding time for low level mercury samples.

DATES: This final rule is effective on November 23, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Standard Time on November 12, 2002 in accordance with 40 CFR 23.7. The incorporation by reference of EPA Method 1631, Revision E, is approved by the Director of the Federal Register as of November 23, 2002.

FOR FURTHER INFORMATION CONTACT: William Telliard; Engineering and Analysis Division (4303T); Office of Science and Technology; Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 566–1061 or e-mail at *telliard.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, NPDES permitting authorities, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' (*i.e.*, promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permitting authority must specify one of the approved testing procedures or an approved alternate test procedure for the measurements required under the permit. In addition, when an authorized State, Territory, or Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the approved testing procedures. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Private facilities required to monitor.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be

regulated. To determine whether your facility or organization is regulated by this action, you should carefully examine the applicability language at 40 CFR 136.1 (NPDES permits and CWA). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTON.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. W–01–05. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket located at EPA West Building, Room B135, 1301 Constitution Avenue, Washington, DC. This Docket Facility is open from 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. The Docket telephone number is 202–566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*}

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Outline of Document

I. Statutory Authority

Today's rule is promulgated pursuant to the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314(h), 1317, 1361(a) (the ''Act'' or ''CWA''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his function under this Act.'' EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR parts 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 402.12).

II. Background

A. Regulatory History

On May 26, 1998, EPA proposed EPA Method 1631 at 40 CFR part 136 for use in determining mercury at ambient water quality criteria levels in EPA's Clean Water Act programs (63 FR 28867). On March 5, 1999, EPA published a Notice of Data Availability that included additional data supporting the application of EPA Method 1631 to effluent matrices (64 FR 10596), and on June 8, 1999, published a final rule promulgating EPA Method 1631, Revision B: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (64 FR 30416) at 40 CFR part 136. Following method promulgation, EPA published a technical correction replacing Revision B (Method 1631B) with EPA Method 1631, Revision C (66 FR 32774; June 18, 2001). Revision C clarified the method text regarding the reporting and use of field blanks.

B. Settlement Agreement

Following promulgation of EPA Method 1631B on June 8, 1999, several industry groups filed a petition for judicial review of the method. On October 19, 2000, EPA entered into a Settlement Agreement (*Alliance of Automobile Manufacturers, et al.* v. *EPA,* No. 99–1420, D.C. Dir.) with the Petitioners. The Settlement Agreement includes three clauses that address revisions to EPA Method 1631 (Clauses 2, 3, and 4). Clauses 2 and 3 committed EPA to sign a notice of final rulemaking by June 15, 2001, revising sections 12.4.2 and 9.4.3.3 of EPA Method 1631B to clarify the use of field blanks. EPA complied with that commitment. On June 18, 2001, EPA published a notice of final rulemaking announcing a revised version of EPA Method 1631 (Revision C; Method 1631C).

Clause 4 of the Settlement Agreement required that EPA sign a notice for publication in the **Federal Register** to propose additional requirements for certain clean techniques and quality control (QC) provisions on or before September 30, 2001, and to sign a notice

for final action on the proposal on or before September 30, 2002. On October 9, 2001, EPA published a notice proposing such revisions (66 FR 51518). At that time, EPA also made a draft of the method available to present the proposed revisions in context of EPA Method 1631 procedures (draft Method 1631, Revision D). Today's action satisfies EPA's obligation to take final action on the proposed rulemaking.

C. Proposed Rule

On October 9, 2001, EPA proposed revisions to Method 1631 under the Settlement Agreement (66 FR 51518). The proposed revisions were listed in Appendix A of the Settlement Agreement and were presented in Section IV of the proposed rule (66 FR 51520). The proposed revisions would have converted certain of the recommendations and guidance in the method (specifically, certain clean techniques and quality control provisions) into requirements. The proposal would have allowed an NPDES permittee to forgo such requirements at their own discretion, but at their own risk. The proposal would not have allowed other method users (*e.g.*, State agencies) to forgo the proposed requirements.

EPA proposed several additional revisions that were not contested in the litigation. These latter proposals would clarify method procedures, increase method flexibility, and provide additional guidance for method implementation. To ensure consistency with analytical method requirements, EPA also proposed an amendment to Table II at 40 CFR 136.3(e) to address collection and handling of samples for analysis using EPA Method 1631. The additional proposed revisions and the proposed amendment to Table II at 40 CFR 136.3(e) were based on comments and recommendations submitted to EPA by various stakeholders since promulgation of EPA Method 1631B in June of 1999. EPA received 26 comment packages on the October 2001 proposed rule. Section V of this document summarizes the major comments. The administrative record supporting today's action responds to the public comments received on all the proposed changes.

III. Summary of Final Rule

A. EPA Method 1631, Revision E

Today's action replaces all previously approved versions of EPA Method 1631 with EPA Method 1631, Revision E (Method 1631E) for measurement of mercury in aqueous samples. Today's action does not repeal any other currently approved methods that measure mercury. EPA Method 1631E (the ''Method'') incorporates several revisions to increase method flexibility and improve data quality. These revisions:

- Allow the use of automated flow-injection systems (Sections 10.3 and 11.2.2);
- Incorporate system blanks for use with automated flow-injection systems (Sections 9.4.2 and 10.3.2);
- Incorporate definitions for blank samples (Sections 9.4 and 17);
- Incorporate a requirement for analysis of method blanks (Section 9.4);
- Include a requirement to analyze bottle blanks at a recommended minimum frequency of 5 percent (Sections 6.1.2.4 and 9.4.7);
- Allow extension of the calibration range (Sections 1.3 and 10.4);
- Remove requirements for immediate sample preservation, refrigeration of unpreserved samples, and collection of samples with zero headspace, provided sample bottles are tightly capped and samples are either preserved or analyzed within 48 hours of collection (Section 8.5).
- Allow extension of the time until preservation to 28 days if a sample is oxidized in its sample container (Section 8.5);
- Extend the maximum sample holding time (time from sample collection until sample analysis) from 28 days to 90 days (Section 8.5);
- Incorporate a carryover test for determining the amount of mercury that would be carried into a subsequent sample when a sample containing a high level of mercury is analyzed (Sections 4.2.8.1 and 11.2);
- Further clarify that samples must be completely oxidized prior to analysis (Section 8.1);
- Allow shipment of empty bottles for sample collection (Section 6.1.2.1);
- Incorporate a requirement for analysis of a minimum of two matrix spike/matrix spike duplicate (MS/MSD) sample pairs per analytical batch of twenty samples (Section 11.1.2);
- Reinforce the requirement that only glass or fluoropolymer bottles may be used for sample collection (Section 4.3.7.1 and 8.2);
- Allow both field and laboratory sample filtration (Sections 2.2 and 8.4);
- Correct part numbers (Sections 6.1.3.2 and 6.1.3.3); and
- Clarify that method users are permitted to omit steps or modify procedures provided that all performance requirements in the Method are met, but must not omit or modify any procedure defined by the term ''shall'' or ''must,'' and must perform all quality control tests (Method introductory note).

B. Amendment to 40 CFR 136.3(e), Table II

Today's rule also amends 40 CFR 136.3(e) by adding a footnote (17) to Table II to include requirements for collection, filtration, preservation, and maximum holding times that are specific to samples collected for determination of mercury using EPA Method 1631. This footnote includes the following requirements for mercury samples: samples must be collected in either fluoropolymer or glass containers; samples must be preserved with either HCl or BrCl within 48 hours of collection; time until preservation may be extended to 28 days if samples are oxidized in the sample bottles; samples have a maximum holding time of 90 days from the date of sample collection; and samples must be filtered in a clean area in the laboratory or in the field prior to sample preservation. This amendment provides consistency with requirements approved in previous versions of EPA Method 1631 and with the revisions promulgated today.

IV. Changes from the October 9, 2001 Proposed Rule

A. Additional Requirements for Clean Techniques and Quality Control Provisions

Under the Settlement Agreement, EPA proposed certain clean techniques and quality control (QC) provisions as requirements. Under the then existing versions of Method 1631, these provisions were only recommendations. These provisions were presented in Section IV.A of the proposed rule and were indicated throughout draft Method 1631D by the word ''must'' in bracketed and italicized text. A summary of the comments received and EPA's response to the comments is presented in Section V.B of this document.

Commenters generally opposed the changes from ''should'' to ''must,'' maintaining that Method 1631 and other EPA methods should be ''performance based''; *i.e.*, that the method user should be accorded flexibility to improve method performance and lower the costs of measurements, provided all performance criteria are met. However, commenters supported specific requirements for analysis of bottle blanks (Sections 6.1.2.3 and 9.4.7), analysis of blanks to test for carryover (Sections 4.3.8.1 and 11.2), analysis of two MS/MSD pairs per each analytical batch of 20 samples (Section 11.1.2), and use of either fluoropolymer or glass containers for sample collection

(Section 4.3.7.1). In response to comments, EPA is incorporating these changes into EPA Method 1631E in today's rule.

Following review of comments, EPA believes that requiring the additional proposed requirements for clean techniques or quality control provisions would result in unnecessary economic burden and would limit future use of the Method. With the exceptions outlined above, EPA is not promulgating the clean techniques and quality control requirements proposed earlier. Instead, EPA has retained in the Method as recommendations that samples should be collected using clean hands/dirty hands collection procedures (Section 9.4.4.2); samples should be processed in a clean room or clean bench (Sections 4.3.3 and 8.5.3); exposure to sources of contamination should be minimized (Section 4.3); work surfaces should be cleaned prior to processing sample batches (Section 4.3.5); traps that tend to absorb large quantities of water vapor should be pre-dried or discarded (Section 4.3.3); outside air, if clean, should be brought into the clean bench air intake (Section 7.2); samples should be stored in clean, new polyethylene bags prior to use (Section 8.6); and samples collected for measurement of methylmercury should be collected and preserved according to procedures required in the analytical method that will be used (Sections 2.3 and 8.5).

B. Election by a Permittee or Industrial User

Under the Settlement Agreement, EPA also proposed that an NPDES permittee or an industrial user of a POTW be able to elect not to implement the clean techniques and QC provisions ''in its discretion and at its peril, unless specifically provided otherwise by the relevant permitting agency or pretreatment control authority, as the case may be.'' The election, if promulgated, would apply only to those clean techniques and QC provisions designated in the Settlement Agreement and designated by bracketed and italicized text throughout draft Method 1631D. Because EPA is not imposing such requirements, EPA has not included the proposed election revision in today's final rule. A summary of the comments regarding the proposed option and EPA's response to the comments is presented in Section V.C of this document.

C. Additional Revisions to EPA Method 1631

Since promulgation of EPA Method 1631B in June 1999, EPA received many suggestions from Method users for improving method flexibility and clarifying certain method procedures. EPA proposed and discussed these improvements and clarifications in the October 9, 2001 proposal. In today's final rule, EPA is withdrawing or revising certain proposed Method revisions based on adverse comments. Specifically, EPA is (1) revising the term ''calibration blank'' to ''system blank'' for those blank samples required during calibration and batch analyses when using a flow-injection system, (2) revising the proposed QC acceptance criteria associated with system blanks and the use of these blanks, (3) withdrawing the frequency requirement associated with analysis of bottle blanks, and (4) withdrawing the requirement to commensurately raise the lowest calibration point when the upper end of the calibration range is raised. These four revisions and the corresponding comments on the proposed rule are described in more detail in Sections V.E through V.F of this document.

D. Extension of Holding Times for Unpreserved Samples

In the October 9, 2001 proposal, EPA stated that it was reviewing data that indicate samples collected for measurement of low level mercury may be stable for as long as 35 days prior to preservation, and included the data in the Record supporting the proposed rule. At that time, EPA also solicited additional data or comments regarding the stability of unpreserved samples.

EPA received comments on the proposed rule that support extension of the time prior to preservation and has completed review of the data discussed in the proposed rule. In response to these data and to submitted comments, EPA is requiring in Method 1631E that samples must be preserved within 48 hours of sample collection. However, EPA is allowing extension of the time until preservation to 28 days if samples are oxidized in the sample bottles. EPA has included this change in Section 8.5 of EPA Method 1631E and in Footnote 17 to Table II at 40 CFR 136.3(e).

E. Clarifications and Corrections

Minor clarifications and technical corrections are included in EPA Method 1631E to address errors and inconsistencies noted by commenters. These changes and corrections:

- Revise Section 9.4.2 to clarify that system blanks are specific to flow-injection systems;
- Revise Section 9.4.3.1 to clarify that in order to assess possible contamination from reagents, reagent blanks include hydroxylamine hydrochloride solution in addition to BrCl solution;
- Revise Section 11.2.2.1 to clarify that the amount of NH_2OH required will be approximately 30 percent of the BrCl volume;
- Revise the QC acceptance criteria for reagent blanks in Section 9.4.3 from 0.25 ng/L to 0.2 ng/L for consistency with reporting requirements;
- Revise Section 12.2.1 to clarify that the mean peak response for bubbler blanks measured during calibration or with each analytical batch is used for calculating sample results;
- Correct the concentration units in the equations in Sections 12.2.2 and 12.3.2;
- Revise Section 9.3.2.2 to clarify that identical volumes of spiking solution must be used for MS/MSD samples;
- Revise Section 4.4.1 to clarify that, for those samples requiring pre-reduction with $SnCl_2$ (*i.e.*, samples containing iodide concentrations greater than 3 mg/L), the $SnCl_2$ should be added in a closed vessel or analysis should proceed immediately;
- Revise Section 11.1.1.2 to clarify that samples containing high organic content may also be diluted to reduce the amount of BrCl that may be required, provided that the resulting level of mercury is sufficient for reliable determination within the range of method calibration;
- Revise Section 7 to include a note clarifying that the quantities of reagents and the preparation procedures are for illustrative purposes. A laboratory may use quantities of reagents and procedures that differ, provided it is able to demonstrate equivalent performance;
- Revise Sections 7.9 and 7.10 to clarify that standard solutions should be replaced monthly, or longer if extended stability is demonstrated;
- Correct Section 2.7 to include the analytical trap in the description;
- Revise Section 9.1.7 and Section 10.1 to clarify that analysis of samples may proceed without recalibration, provided system performance is verified at the end of the analytical sequence;
- Revise Section 9.4 to address the performance criteria associated with blank samples in those circumstances when a method detection limit greater than 0.2 ng/L is sufficient to address compliance monitoring;
- Include a note in Section 9.1.2.1 to clarify that acceptance criteria associated with blank samples may be adjusted to support measurements at the compliance level; and
- Revise Section 12.5.1 to include specifications for reporting results of Method blanks.

V. Response to Major Comments

EPA requested comments on the various EPA Method 1631 revisions detailed in the October 9, 2001 proposal, and requested data supporting comments, if available. Twenty five stakeholders provided comments on the proposal addressing over 50 separate issues. Stakeholders included 10 laboratories, 6 POTWs, 3 regulatory authorities, 3 industries/industry groups, one instrument manufacturer, a group of several POTWs, and the Petitioners (see Settlement Agreement discussion, Section II.B).

The following section summarizes major comments received on the proposed rule and EPA's response. The complete Response to Comments document can be found in the public record for this final rule (Record Section VI, DCN B.1).

A. Performance-Based Measurement System

Several commenters on the October 9, 2001 proposed rule noted that Section 1.8 of EPA Method 1631 describes the method as performance-based, and that if certain recommendations for clean techniques included in the method were to become requirements as proposed, the method would no longer be performance-based. Commenters stated that requiring laboratories and sample collectors to adopt clean procedures that are unnecessary is contrary to a performance-based measurement system, and added that additional requirements would impose cost burdens that could result in reduced method implementation. Commenters stated further that performance-based measurements must not prescribe particular actions unless they are essential to the successful implementation of the method. Commenters added that many of the proposed requirements would lock users into current technology despite the many advances and improvements in techniques and equipment that are likely to occur in the coming decades. Commenters believe that if the performance-based nature of the method is not retained, further improvement of method performance would be hindered.

EPA developed performance-based measurement systems as part of EPA's commitment to reducing unnecessary regulatory burden and encouraging the use of emerging and innovative technologies. Throughout development of these analytical methods, EPA recognized that allowance for this flexibility must be matched with controls to ensure that data quality is maintained. For this reason, many approved methods include standardized QC tests and specific QC acceptance criteria that must be met when a method is modified to overcome interferences or lower the cost of measurement.

The QC acceptance criteria included in EPA Method 1631 were developed using method validation data from 12 laboratories. These criteria include precision and recovery performance requirements for the matrix spike and matrix spike duplicate (MS/MSD), initial and ongoing precision and recovery (IPR and OPR), calibration linearity, method detection limit (MDL), and quality control samples (QCS). EPA Method 1631 criteria also include requirements for several blanks (*i.e.*, equipment, bottle, field, method, reagent, system, and bubbler blanks) to monitor potential contamination during sample collection and analysis.

EPA acknowledges the concerns submitted by commenters and agrees that the QC requirements and acceptance criteria in EPA Method 1631 are sufficient to ensure data quality and preclude inadequate method implementation. For these and other reasons given in the Response to Comments document, EPA has decided not to require most of the clean techniques and quality control provisions proposed.

B. Proposed Requirements for Clean Techniques

Only comments submitted on behalf of the Petitioners supported promulgation of all the proposed requirements for the additional clean techniques specified in the Settlement Agreement. This commenter stated that clean sampling and analytical techniques are critical to obtaining reliable results for use in the regulatory process. The commenter stated further that, although clean techniques result in additional expense, the consequences could be more serious if data users act upon test results that may be affected by contamination.

Nineteen commenters submitted comments opposing these additional requirements. These commenters believe that EPA Method 1631 contains sufficient QC to determine the source of any contamination and that if a laboratory can demonstrate it is capable of meeting the Method QC criteria without the additional proposed clean techniques, it should be allowed to do so. Several commenters stated that the reasoning behind the proposed requirements appears to be arbitrary and that it is unclear what scientific basis was used to determine which techniques should be requirements. Commenters noted that the requirements would place a burden, operational and economic, on facilities with little or no gain in analytical performance, and could severely limit the ability of regulators to determine whether mercury discharges are being controlled effectively. At least one POTW commenter stated that, if these requirements were promulgated as proposed, it most likely would no longer use EPA Method 1631. Additionally, a regulatory authority noted that if costs escalate because of additional requirements, such costs would limit the ability of regulators to determine whether mercury discharges are being controlled effectively.

EPA agrees with the majority of commenters and believes that the additional requirements proposed to be included in EPA Method 1631 would be burdensome, and that the QC acceptance criteria included in the Method are sufficient to ensure data quality. EPA has not received data to support a decision that the proposed additional clean techniques and quality control provisions are necessary to ensure validity of data obtained through implementation of EPA Method 1631. The requirements and criteria associated with quality control and blank samples throughout the Method are the most appropriate and valuable means for identifying and controlling contamination.

Additionally, EPA believes that if all of the recommendations for clean techniques were required, compliance with the requirements would be extremely difficult to monitor. For example, EPA proposed to revise Method 1631 Section 4.3.8.4 as follows: ''* * * Whenever possible, sample processing and analysis [must] occur as far as possible from sources of airborne contamination.'' Following review of comments, EPA believes that it does not have sufficient information to provide specific tests to determine compliance with such a requirement. EPA believes the most appropriate means for demonstrating that samples are processed and analyzed using procedures to minimize contamination are already included in the requirements and criteria for analysis of blanks, and that analysts are appropriately advised regarding how to avoid contamination by the recommendations for clean techniques in the Method.

EPA also recognizes that sample locations and laboratory environments can differ significantly and that the site-specific clean techniques necessary to meet the performance criteria included in EPA Method 1631 will be best

determined and improved upon by individual Method users. For these reasons, and to respond to the concerns of commenters, EPA is retaining the clean techniques provisions as recommendations but not requirements in EPA Method 1631E. EPA Method 1631E continues to require that all QC tests be performed and that all QC acceptance criteria are met, and continues to include the following as recommendations:

- Use a clean room or clean bench for sample preparation and analysis (Sections 4.3.3 and 8.5.3);
- Minimize exposure of the apparatus to contamination (Section 4.3.3);
- Clean work surfaces prior to processing sample batches (Section 4.3.5);
- Process samples as far as possible from sources of airborne contamination (Section 4.3.8.4);
- Ensure that laboratory air is low in mercury (Section 7.2);
- Store sample bottles in clean (new) polyethylene bags until sample analysis (Section 8.6); and
- Use ''Clean Hands/Dirty Hands'' techniques described in EPA's Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels for collection of equipment blanks (Section 9.4.4.2).

In addition to recommending these protocols for clean techniques throughout EPA Method 1631E, EPA published several guidance documents supporting the collection and analysis of samples for measurement of low-level mercury. These guidance documents include Guidance for Implementation and Use of Method 1631 for Determination of Low-Level Mercury (40 CFR Part 136) EPA 821–R–01–023, March 2001; Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels, EPA–821–R–96–001, July 1996; Guidance on Establishing Trace Metals Clean Rooms in Existing Facilities, EPA–821–B–96–001, January 1996; and Guidance on Documentation and Evaluation of Trace Metals Data Collected for Clean Water Act Compliance Monitoring, EPA–821–B–96–004, July 1996.

C. Election by a Permittee or Industrial User

Under the Settlement Agreement, EPA proposed to require specific clean techniques and QC provisions in draft Method 1631D and to provide only NPDES permittees and industrial users with the option not to implement those techniques and provisions.

Comments submitted on behalf of the Petitioners regarding this proposed option state that this approach would be appropriate because (1) the liability associated with sampling lies with the permittee and, therefore, the permittee should have the discretion to determine what is or is not an acceptable contamination risk, (2) permittees are familiar with the characteristics of their effluent and the level to which clean techniques must be followed, and (3) EPA and State agencies lack this level of facility-specific understanding and therefore, should be required to follow clean procedures. The commenter added that, under the current system, permittees may be precluded from raising the contamination issue as a defense in an enforcement action or, at a minimum, would bear the very heavy burden of proving contamination for data generated by EPA or State agencies.

Eleven commenters stated that giving certain groups the option to eliminate certain requirements for clean techniques and QC provisions would result in a plethora of methods and would make it very difficult for contract testing laboratories who would bear the burden of the resulting confusion. Some permittees may elect to forgo required clean techniques while others would not; all laboratory customers, however, would benefit and bear costs of clean techniques, regardless of their election. These commenters believe that such an option would set a dangerous and undesirable precedent regarding what any particular person believes is ''necessary'' to achieve a scientifically valid result. These commenters stated further that implementation of this option would limit the quality and value of collective databases for environmental decision making.

In today's final rule, EPA is not requiring most of the proposed clean techniques and QC provisions for any users of the Method. EPA agrees with the majority of commenters that applying such requirements to only some users would create unwanted inconsistency, would severely impair laboratories serving multiple clients, and would ultimately cause misinterpretation of data and confusion among regulators and laboratories. Most importantly, EPA disagrees with the comment that all of the proposed clean techniques are necessary to obtain reliable results. EPA also disagrees with the comment that Federal and State laboratories lack the necessary information (or even need facility-specific information) to minimize contamination. In today's final rule, EPA has not included this option in EPA Method 1631E.

Rather than requiring the clean techniques and QC provisions for some users but not for others, EPA instead is providing equal flexibility for all users of the Method. Most of the clean techniques and QC provisions are included only as recommendations in the final rule. Because EPA is not requiring most of the proposed clean techniques and QC provisions for any users of the Method, there is no reason to include the option for permittees and industrial users to elect not to use them, and in today's final rule, EPA has not included this option.

D. Bottle Blanks

EPA proposed to revise EPA Method 1631 to include requirements to assess cleanliness of bottle blanks and to require analysis of bottle blanks at a minimum frequency of 20 percent from a given lot. Most commenters agreed that requiring analysis of bottle blanks is appropriate and good practice. However, only one comment submitted regarding these blank samples supported a requirement that bottle blanks be analyzed at a frequency of 20 percent. EPA received comments from 7 laboratories, 1 instrument manufacturer, and 1 regulatory authority that this frequency requirement is excessive, and would result in unnecessary additional equipment costs. Commenters also provided cost information suggesting that, if one assumes a low cost of between $40 and $50 per Method 1631 analysis performed, this requirement would add a cost of $800 to $1000 per lot of clean bottles, or approximately $8 to the cost of each bottle purchased. Commenters also recommended alternate frequency requirements for bottle blank testing ranging from a minimum of 1 percent to 10 percent.

EPA's proposal to include a requirement that a minimum of 20 percent of the bottles from a given lot be tested for cleanliness was based on current practices implemented in a single laboratory. Because method and field blanks also are used to monitor contamination and are required in EPA Method 1631E, EPA agrees that requiring testing of 20 percent of the bottles from each lot is unnecessary and probably excessive. Although laboratories and cleaning facilities may choose to test at this frequency as a means of ensuring contamination control, EPA is not requiring that frequency in today's rule. EPA believes that testing a lot of bottles at a minimum frequency of 5% is sufficient and has included this frequency as a recommendation in EPA Method 1631E. While EPA is recommending that bottle blanks be analyzed at a frequency of 5%, laboratories have demonstrated the ability to meet EPA Method 1631 performance criteria and data quality

objectives analyzing bottle blanks at a minimum frequency of 1%. Therefore, if a laboratory is able to meet performance criteria using a minimum frequency of 1%, it should be allowed.

E. Range of Method Calibration

In response to several requests from stakeholders to apply EPA Method 1631 across a broader range, EPA proposed to allow calibration to a lower point (below the ML) to more accurately measure mercury in blank samples, and to a higher point (above 100 ng/L) to measure concentrations presently measured with other approved mercury methods. EPA also proposed certain criteria to ensure that this allowance would not compromise data quality. These criteria included: (1) A minimum of five, non-zero calibration points; (2) the difference between successive calibration points must be no greater than a factor of 10 and no less than a factor of 2 and should be approximately evenly spaced on a logarithmic scale over the calibration range; (3) the relative standard deviation (RSD) of the calibration factors for all calibration points must be less than 15%; (4) the calibration factor for any calibration point at a concentration greater than 100 ng/L must be within plus or minus 15% of the average calibration factor for the points at or below 100 ng/L; (5) the calibration factor for any point less than 5 ng/L must be within plus or minus 25% of the average calibration factor for all points; (6) if the highest calibration point is increased above 100 ng/L, the lowest calibration point (ML) must be increased commensurately above 0.5 ng/L; and, (7) if the calibration is to a higher range and this Method is used for regulatory compliance, the ML must be less than one-third the regulatory compliance limit.

Several commenters expressed concern regarding the proposed option to extend the lower end of calibration in EPA Method 1631. Commenters noted that in the proposed rule preceding the June 8, 1999, promulgation of EPA Method 1631B, EPA proposed to allow users to calculate lower MDLs and MLs. Based on comments, however, EPA ''removed the option for laboratories to calculate their own lower MDLs and MLs. * * *'' 64 FR 30420 (June 8, 1999). In support, EPA stated its belief that ''this will avoid confusion and preclude lower MDLs and MLs from being used for NPDES permitting or regulatory compliance determinations.'' Commenters stated that authorization for Method users to calibrate instruments to below the Method ML would result in regulatory uncertainty. For these reasons and in response to comments, EPA has clarified this provision in EPA Method 1631E by stating that, for the purpose of measuring the level of mercury in blank samples only, calibration may be extended to a lower level.

One commenter on the proposed rule expressed concern that allowing extension of the high end of the calibration range could jeopardize low-level compliance determinations by increasing the potential for bias resulting from cross contamination or carryover. The commenter pointed out that EPA acknowledged this increased risk by proposing a new method section that specified a carryover test (see Proposed Rule, Section IV.A.7). This commenter believes that bubbler blank and method blank analyses are insufficient to identify and control contamination if calibration is extended to levels greater than 100 ng/L. EPA proposed to add a carryover test to Method 1631 in response to comments from stakeholders who requested an allowance for extension of the method calibration range, but were concerned about potential contamination that could result from extension of the upper end of calibration. EPA believes that the carryover test, the requirements associated with blank analyses, and the calibration criteria included in Method 1631, Revision E are sufficient to prevent effects that could result from cross contamination or carryover. For this reason, and in response to additional comments, EPA has included an allowance for extension of the upper end of the calibration range in EPA Method 1631, Revision E.

Three additional commenters supported extension of the upper end of the calibration range. These commenters believe the carryover test and ongoing blank determinations will ensure the analytical system remains sufficiently clean or that carryover will be detected should it occur. The commenters stated, however, that the corresponding criterion that the lowest calibration point must be raised commensurately when the upper end of calibration is raised is inappropriate. Commenters stated further that this criterion is unnecessary, particularly if an analytical system is demonstrated to be sufficiently linear and clean as specified by QC requirements included in the Method. Commenters added that commensurate raising of the lower end of calibration is unnecessary, particularly if two of the additional proposed corresponding criteria for extended calibration are met (*i.e.*, the calibration factor (CF) for any calibration point at a concentration greater than 100 ng/L must be within plus or minus 15 percent of the average CF for the points at or below 100 ng/L and the CF for any point less than 5 ng/L must be within plus or minus 25 percent of the average CF for all points). EPA agrees that commensurate raising of the lower end of calibration is unnecessary, provided the remaining calibration criteria are met. EPA also points out that (1) there is no similar restriction in other methods; (2) the carryover test included in Section 4.3.8.1 of Method 1631, Revision E will allow a laboratory to determine the level at which Hg will be carried into a succeeding sample or blank; (3) the extensive requirements for blanks will detect contamination; and (4) a laboratory can run a blank before each sample, if desired, to demonstrate that a preceding sample did not carry Hg into the next sample. For these reasons, EPA is not including the proposed requirement for increasing the low end of the calibration range when the upper end is increased in today's rule.

Following review of these comments, EPA has determined that allowing Method users to raise the Method calibration range, provided the performance criteria specified in Section 10.4 of the Method are met, will increase method flexibility without compromising data quality. Such an allowance is consistent with EPA protocol for approval of new methods and with the International Union of Pure and Applied Chemists (IUPAC) guidelines for calibration. EPA agrees with most commenters and believes that Method 1631 contains QC requirements that are sufficient to detect and preclude carryover from samples or standards containing high levels of mercury (*i.e.*, greater than 100 ng/L). Additionally, EPA agrees that the criteria included in Section 10.4 of the Method is sufficient to ensure data quality without the requirement to raise the lower end of calibration if an extended upper end of calibration is used. For these reasons, EPA has removed the requirement to commensurately raise the low end of the calibration range when the upper end is raised from Section 10.4 of Method 1631E and is approving the provision to allow extension of the upper end of the calibration range. EPA also agrees with most commenters that the proposed procedure for identifying and controlling carryover will assist Method users, and is promulgating the procedures in Section 4.3.8.1 (see Section V.I. below).

F. Acceptance Criteria Associated With Blank Samples

EPA received several comments regarding Method 1631 QC acceptance

criteria associated with the analysis of blank samples. Numerous commenters stated that an acceptance criterion stipulated as less than the Method MDL (<0.2 ng/L) is inappropriate. Commenters note that measurements below the minimum level of quantitation (*i.e.*, the lowest calibration point) of an analytical method are inherently problematic and will result in failures attributable to random variation alone. Commenters also state that such a criterion is inappropriate because an MDL of 0.2 ng/L is not required to meet performance specifications in the Method. These commenters point out that Section 9.2.1 of EPA Method 1631 states that an MDL less than or equal to 0.2 ng/L or one-third the regulatory compliance limit, whichever is greater, is acceptable. Commenters note further that if a compliance level were 4 ng/L, an MDL determination of 1.3 ng/L would be sufficient. In such a case, monitoring levels of mercury in blanks against a criterion of 0.2 ng/L would be inconsistent.

Except for those criteria associated with calibration and method blank analyses, the QC acceptance criteria for blank samples included in EPA Method 1631 are identical to those originally proposed in May 1998. EPA received, reviewed, and responded to numerous comments prior to promulgation of EPA Method 1631B in June of 1998. Since promulgation, use of EPA Method 1631 has increased significantly, as has the ability to meet Method QC acceptance criteria. For this reason, EPA did not include revisions to these acceptance criteria in the October 2001 proposed rule, and is not promulgating such revisions in today's final rule. In response to comments on the October 2001 proposed rule, however, EPA is clarifying that the QC acceptance criteria for blank samples may be adjusted (*i.e.*, raised) to support measurements at the compliance level (see EPA Method 1631E, Note to Section 9.1.2.1). For example, if the compliance level is 4 ng/L, an appropriate MDL would be 1.3 ng/L, the corresponding lowest calibration standard would be at the ML of 4 ng/L, and appropriate QC acceptance criteria for blank samples would be 1.3 ng/L (bubbler and reagent blanks) or 4 ng/L (method, field, and bottle blanks).

G. Flow-Injection Systems

Commenters were supportive of EPA's proposed revision to incorporate automated flow-injection systems into EPA Method 1631. Commenters stated that, without EPA's acknowledgment that these systems are in use, implementation of such systems could be curtailed.

1. Calibration or System Blanks

EPA Method 1631, Revision C included bubbler blanks to establish a background for the bubbler system (*i.e.*, bubbler, traps, and cold-vapor atomic fluorescence detector). Bubbler blanks, however, are not appropriate for flow-injection systems. Hence, EPA proposed a requirement for analysis of calibration blanks when using flow-injection systems. The proposed QC acceptance criteria and application requirements for the calibration blanks were identical to the existing QC acceptance criteria and application requirements for the bubbler blanks (*i.e.*, the mean result of bubbler or calibration blanks is subtracted from results of calibration standards and samples and must be < 0.25 ng/L).

Since proposal, EPA has determined that the term ''system'' blank is more appropriate for the blank samples associated with flow-injection systems because these blank samples are used to assess contamination during calibration and during analysis of analytical batches. Therefore, EPA has replaced the proposed term ''calibration blank'' with ''system blank'' throughout Method 1631E.

Numerous commenters strongly objected to the requirements associated with the system blanks that EPA proposed to accompany flow-injection systems. Commenters stated that bubbler blanks and calibration (*i.e.*, system) blanks are not identical in either composition or purpose, and emphasized that it would be inappropriate and impractical to treat these samples as identical. Commenters noted that, unlike bubbler blanks which analyze previously-purged water to measure the level of mercury remaining in the bubbler system, system blanks measure residual mercury in reagent water as well as mercury in the reagents used in the calibration standards and samples. Commenters added that for this reason, the proposed system blank criteria for flow-injection systems are at least twice as restrictive as those placed on the use of bubbler systems.

In response to comments and upon further review of automated flow-injection systems, EPA has revised the proposed requirements associated with system blanks. EPA recognizes that flow injection systems require that reagents are added to all samples including the calibration standards, and has included a criterion in Section 9.4.2 of EPA Method 1631E that system blanks containing levels of mercury equal to or greater than 0.5 ng/L demonstrate that the system is out of control.

2. Terminology

Two commenters on the proposed rule stated that EPA should revise the term used for these systems from ''Automated Flow-Injection'' to ''Continuous Flow'' throughout EPA Method 1631. Although EPA agrees with these commenters that ''Continuous Flow'' is descriptive of the flow-injection systems used for determination of mercury in EPA Method 1631, it is a generic term that includes other systems such as sequential injection, sequential flow, and bead injection systems. EPA believes that the system described in EPA Method 1631 is consistent with the definition of a flow injection system, and has retained the proposed ''flow-injection'' terminology throughout EPA Method 1631E.

H. Sample Containers

Twelve commenters submitted comments regarding the proposed requirement to use either glass or fluoropolymer containers for collection of samples for measurement of mercury using EPA Method 1631. Commenters generally emphasized support for the performance-based nature of sample container selection to preclude unnecessary expense and allow for development of future materials. However, most commenters also expressed preference for fluoropolymer, glass, or fluoropolymer-lined glass containers for sample collection and preparation, particularly because of the possibility for some forms of mercury to move in or out of containers composed of other materials.

Four commenters on the proposed rule requested that EPA Method 1631 be revised to allow collection of samples in high density polyethylene (HDPE) containers if the samples are shipped to the laboratory for preservation and transferred to fluoropolymer containers within 48 hours. These commenters submitted identical data comparing summary results of samples collected using fluoropolymer sample bottles to samples collected using HDPE sample bottles to support this request. These data are included in Section V.E.1.10 of the Rulemaking Record. EPA has reviewed these data, and notes that although the results of the composite samples collected using either container type do not demonstrate a significant trend in mercury increase or loss, the results of the grab samples indicate a consistent increase in mercury concentration, ranging from 15 to 240 percent, in samples collected using HDPE containers.

EPA recognizes the concern that some forms of mercury can move in or out of containers composed of materials other than fluoropolymer or glass, and believes this concern is emphasized by commenters requesting that samples collected using HDPE containers be allowed only if the samples are transferred to fluoropolymer containers within 48 hours. In response to comments, and in recognition of current Method implementation practices, EPA is including a requirement in EPA Method 1631E that only fluoropolymer or glass containers be used for collection of samples to avoid artificial increases in mercury levels prior to measurement.

I. Carryover

EPA proposed to include a carryover test in Method 1631 to determine the concentration at which greater than 0.2 ng/L mercury would be carried into the subsequent sample (see draft EPA Method 1631D, Section 4.3.8.1). EPA also proposed to require that each time a laboratory analyzes a sample containing the concentration of mercury determined to result in 0.2 ng/L carryover, the laboratory must run a bubbler or calibration blank to ensure carryover does not affect the results of the analysis of the subsequent samples.

Commenters generally supported incorporation of a carryover test to identify and control contamination from carryover that can result from analysis of samples containing high levels of mercury. Commenters also supported the proposed requirement for analysis of a blank sample following a sample containing a high level of mercury to demonstrate that the analytical system is clean. Several commenters, however, noted that the proposed standard for determining carryover (*i.e.*, the level at which the analytical system will carry greater than 0.2 ng/L of Hg into a succeeding bubbler or calibration blank) is inappropriate because measurements below the ML of 0.5 ng/L are unreliable.

EPA has reviewed these comments and agrees with commenters' concerns regarding this performance standard. EPA recognizes that the carryover test is designed to target samples containing levels of mercury that could cause carryover, and believes that a performance standard of 0.5 ng/L is appropriate for the purposes of this test. EPA also believes, however, that in order to ensure data quality at the low levels of detection achievable by EPA Method 1631, levels of mercury no greater than 0.2 ng/L should be permitted to be carried over into succeeding samples. For this reason, EPA is requiring that a bubbler blank or system blank be analyzed following a sample containing a level of mercury that is one-half or greater than the level identified in the carryover test. Specifically, EPA is requiring that when a sample is analyzed that contains one-half or greater of the level of mercury that has been determined to result in 0.5 ng/L carryover, a blank must be analyzed to demonstrate no carryover at the 0.2 ng/L level (see Section 4.3.8.1 of EPA Method 1631E). For example, if the carryover test determines that samples containing 150 ng/L result in carryover greater than 0.5 ng/L, then the laboratory must analyze a blank sample following analysis of any sample containing more than 75 ng/L mercury.

EPA received additional comments presenting other concerns related to the carryover test. Commenters noted that it is unnecessary to require analysts to order samples from the lowest to the highest concentration. Commenters stated that analysts will define the order of samples according to information made available to them, and that there are other factors besides mercury concentration that are important in determining the order of samples. Commenters also noted that EPA should clarify that blanks should be run on the same bubbler used to run the high-concentration sample and that the requirements for the carryover test were not included in procedures for implementation of flow injection systems. EPA acknowledges that analysts often are not aware of the concentration levels of mercury contained in samples and that analysts may wish to order samples from least complex matrix to most complex matrix (*e.g.*, ambient water to influent). For this reason, EPA has removed the requirement, and is instead recommending that samples known or suspected to contain the lowest concentration of mercury should be analyzed first followed by samples containing higher levels. EPA also has clarified that a bubbler blank should be analyzed using the same bubbler as that used to analyze the high-concentration sample and has added Section 11.2.2.3 to EPA Method 1631E to clarify that the carryover test and associated blank analysis are required.

J. Other Technical Details

Several commenters requested revisions and clarifications to the Method that were already addressed in the Guidance or were beyond the scope of the proposed rule. Specifically, EPA received comments requesting the inclusion of all QC acceptance criteria into a single table in Method 1631; clarification of site-specific frequency requirements associated with MS/MSD samples; additional recommendations for sample filtration, clean techniques, and sample handling procedures; and approval of EPA Method 245.7: Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry.

Following promulgation of today's rule, the Agency plans to revise the Guidance to reflect today's final rule and to incorporate further clarification of Method procedures. EPA also has completed a study to validate Method 245.7 in multiple laboratories and is planning to continue efforts towards approval of this additional test procedure.

EPA reviewed all the additional recommendations and comments and has provided responses to each in the Comment Response Document.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act

or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the U.S. Small Business Administration definitions at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule promulgates a revised version of an already approved EPA Method to improve and clarify method procedures. Today's rule also promulgates an amendment to Table II at 40 CFR 136.3(e) to provide consistency with previously approved requirements in EPA Method 1631 and with method revisions promulgated today for collection, preservation, and storage of samples for determination of mercury using Method 1631.

Overall, the costs of these revisions are minimal. While some of the revisions may increase cost (*e.g.*, quality control requirements), other revisions will offset any increases and provide flexibility to lower the overall analytical costs (*e.g.*, use of new, less expensive equipment). Many of the laboratories that analyze for mercury are already implementing the additional requirements, further minimizing any potential cost increases. EPA estimates that any costs associated with the additional requirements will be alleviated or eliminated by the additional flexibility. Therefore, EPA believes that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, Tribal, and local governments or the private sector in any one year. This rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This rule promulgates revisions to a previously approved method for measuring mercury in wastewater. This rule also revises Table II at 40 CFR 136.3(e) to clarify requirements for sample collection, preservation, and storage, and to make these requirements consistent with previously approved requirements in EPA Method 1631 and with today's promulgated method revisions. Thus, today's rule is not subject to sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule also is not subject to the requirements of section 203 of the UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not impose any information collection, reporting or record keeping requirements. This action revises a currently approved test method for use in water monitoring programs but does not add additional burden nor specifically require the use of the test method. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previoulsy applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies (VCSBs). The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, EPA

identified no such standards for the measurement of mercury at water quality criteria levels, and none were brought to our attention in comments. Therefore, EPA has decided to promulgate EPA Method 1631, Revision E: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither ''economically significant'' as defined in Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule promulgates EPA Method 1631, Revision E to replace an already approved version of the method for measuring mercury at low levels for compliance monitoring under the Clean Water Act and provide additional flexibility for use of currently available technologies. The costs of this rule for State and local governments are minimal. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, titled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications. ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's rule promulgates EPA Method 1631, Revision E to replace an already approved version of the method for measuring mercury at low levels for compliance monitoring under the Clean Water Act, and provide additional flexibility for use of currently available technologies. The costs of this rule for Tribal governments are minimal. Thus, Executive Order 13175 does not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 29, 2002.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

K. Plain Language Directive

Executive Order 12866 directs each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. Plain language increases compliance, strengthens enforcement, and decreases mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible. Specifically, EPA used active voice and avoided the use of technical terms except when necessary. EPA solicited but received no comments on the Plain Language aspects of this rule.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended:

a. By revising Item 35 in Table IB of paragraph (a).

b. By revising Footnote 43 to Table IB of paragraph (a).

c. By revising paragraph (b)(41).

d. By revising entries 18 and 35 under the heading ''Metals'' in Table II of paragraph (e).

§ 136.3 Identification of test procedures.

* * * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	Standard methods [edition(s)]	ASTM	USGS [2]	Other
* * * * * * *					
35. Mercury—Total,[4] mg/L:					
Cold vapor, manual or Automated Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	245.1 245.2. 1631E [43].	3112 B [18th, 19th]	D3223–91	I–3462–85	977.22 [3]
* * * * * * *					

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., *et al.* "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983". One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

NOTE TO TABLE 1B NOTE 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)
b. is visibly transparent with a turbidity measurement of 1 NTU or less
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

* * * * *

[43] USEPA. 2002. Method 1631, Revision E, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry." September 2002. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–019). The application of clean techniques described in EPA's draft Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

* * * * *

(b) * * *

(41) USEPA. 2002. Method 1631, Revision E, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry." September 2002. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–019). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB2002–108220. Cost: $25.50 (subject to change).

* * * * *

(e) * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
* * * * * * *			
Metals			
18. Chromium VI [7]	P, G	Cool, 4°C	24 hours.
35. Mercury [17]	P, G	HNO_3 to pH<2	28 days.
3, 5–8, 12,13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals except boron, chromium VI and mercury [7].	P, G	do	6 months.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
* *	*	* *	* *

[1] Polyethylene (P) or glass (G). For microbiology, plastic sample containers must be made of sterilizable materials (polypropylene or other autoclavable plastic), except for samples collected for trace-level mercury (see footnote 17).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed, except for samples collected for trace-level mercury (see footnote 17).

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. (See footnote 17 for samples collected for trace level mercury). Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term ''analyze immediately'' usually means within 15 minutes or less of sample collection.

* * * * *

[7] Samples should be filtered immediately on site before adding preservative for dissolved metals, except for samples collected for trace-level mercury (see footnote 17).

* * * * *

[17] Samples collected for the determination of trace level mercury (100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. Samples collected for dissolved trace level mercury should be filtered in the laboratory. However, if circumstances prevent overnight shipment, samples should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. Samples that have been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

[FR Doc. 02–27136 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7398–4]

RIN 2040–AD81

Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for *Aeromonas*; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's rule approves the analytical method and an associated Minimum Reporting Level (MRL) to support the Unregulated Contaminant Monitoring Regulation's (UCMR) List 2 *Aeromonas* monitoring. This List 2 monitoring will be conducted at 120 large and 180 small Public Water Systems (PWS) from January 1, 2003 through December 31, 2003.

Today's rule also approves EPA Method 515.4 to support previously required National Primary Drinking Water Regulation (NPDWR) compliance monitoring for 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon. In addition, EPA Method 531.2 is approved to support previously required NPDWR monitoring for carbofuran and oxamyl.

Minor changes have been made in the format of the table of methods required to be used for organic chemical NPDWR compliance monitoring to improve clarity and to conform to the format of other methods tables. In addition, the Presence-Absence (P–A) Coliform Test listed in the total coliform methods table was inadvertently identified as Method 9221. This has been corrected to 9221 D. Also, detection limits for ''Cyanide'' were added in the ''Detection Limits for Inorganic Contaminants'' table for the two cyanide methods, and minor editorial corrections were made.

EPA is approving seven of the eight additional industry-developed analytical methods that were proposed to support previously required NPDWR compliance monitoring. These seven methods include: A method for the determination of atrazine, two methods for the determination of cyanide, two methods for the determination of total coliforms and *E. coli,* a method for the determination of heterotrophic bacteria, and a method for the determination of turbidity. With respect to the eighth industry-developed method proposed on March 7, 2002, EPA is deferring a decision on its approval until additional clarifying information from the vendor is evaluated.

Finally, EPA is updating the information concerning the inspection of materials in the Water Docket to reflect its new address.

DATES: This regulation is effective November 29, 2002. The incorporation by reference of the methods listed in the rule is approved by the Director of the Federal Register as of November 29, 2002. For purposes of judicial review, this final rule is promulgated as of 1 p.m. Eastern Time on November 12, 2002, as provided in 40 CFR 23.7.

ADDRESSES: The official public docket for this rule is located at EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: For information regarding the actions included in this final rule contact David J. Munch, EPA, 26 West Martin Luther King Dr. (MLK 140), Cincinnati, Ohio 45268, (513) 569–7843 or e-mail at *munch.dave@EPA.gov.* General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

The only regulated entities affected by today's rule are the 300 public water systems selected for *Aeromonas* monitoring. Use of the remaining methods approved in this action is voluntary. If, however, one of these methods is selected to support compliance monitoring, then compliance with the procedures specified in the method is required. A nationally representative sample of 120 large community and non-transient non-community water systems serving more than 10,000 persons is required to monitor for *Aeromonas* under the current UCMR. In addition, a nationally representative sample of 180 small community and non-transient non-community systems serving 10,000 or fewer persons is also required to monitor for *Aeromonas.* States, Territories, and Tribes with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and are thus affected by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS[a]
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is potentially regulated by this action concerning the monitoring for *Aeromonas,* you should carefully examine the applicability criteria in §§ 141.35 and 141.40 of the Code of Federal Regulations (CFR). A listing of both the large and small systems selected to perform *Aeromonas* monitoring is available at *http://www.epa.gov/safewater/standard/ucmr/systems.html.* To determine whether your facility is potentially regulated by this action concerning the use of EPA Methods 515.4 or 531.2 or the additional industry-developed methods being approved, you should carefully examine the applicability criteria in §§ 141.21, 141.23, 141.24 and 141.74 of the CFR. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Availability of Related Information

1. EPA has established an official public docket for this action under Docket ID No. W–01–13. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket, EPA, 1301 Constitution Avenue, NW., EPA West, Room B–102, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426.

2. You may access this Federal Register document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, or access those documents in the public docket that are available electronically. Once in the system, select ''Quick Search,'' then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1.

C. Abbreviations and Acronyms Used in the Preamble and Final Rule

2,4-D—2,4-dichlorophenoxyacetic acid
2,4,5-TP—2,4,5 trichlorophenoxyacetic acid
ADA—ampicilin-dextrin
APHA—American Public Health Association
ASTM—American Society for Testing and Materials
CAS—Chemical Abstract Service
CFR—Code of Federal Regulations
CFU/mL—colony forming units per milliliter
EPA—United States Environmental Protection Agency
et. al.—and others
et. seq.—and the following
GLI method—Great Lakes Instruments method
HCL—hydrochloric acid
HRGC—high resolution gas chromatography
HRMS—high resolution mass spectrometer
ICR—information collection request
LD—point of lowest disinfectant residual
MCL—maximum contaminant level
MD—midpoint in the distribution system
MDL—method detection limit
MI—4-methylumbelliferyl-beta-D-galactopyranoside-indoxyl-beta-D-glucuronide
mg/L—milligram per liter
MR—point of maximum retention
MRL—minimum reporting level
NAICS—North American Industry Classification System
NERL—National Environmental Research Laboratory
NPDWR—National Primary Drinking Water Regulation
NTIS—National Technical Information Service
NTTAA—National Technology Transfer and Advancement Act
OMB—Office of Management and Budget
P–A—Presence-Absence
PCBs—polychlorinated biphenyls
pH—negative logarithm of the effective hydrogen-ion concentration
pKa—negative logarithm of the acidity constant

PT—proficiency testing
PWS—public water system
RFA—Regulatory Flexibility Act
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act
SDWA—Safe Drinking Water Act
UCMR—Unregulated Contaminant Monitoring Regulation
UMRA—Unfunded Mandates Reform Act of 1995
UV—ultraviolet

Table of Contents:

I. Statutory Authority and Background

The Safe Drinking Water Act (SDWA) section 1445(a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. To meet these requirements, EPA published the Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems (in 64 FR 50555, September 17, 1999) which substantially revised the previous Unregulated Contaminant Monitoring Program, codified at 40 CFR 141.40. The September 1999 UCMR requires monitoring for three lists of contaminants. EPA subsequently published supplements to the September 1999 rule which included approved analytical methods for conducting analyses of List 1 and selected List 2 contaminants (65 FR 11372, March 2, 2000 and 66 FR 2273, January 11, 2001) and technical corrections and other supplemental information (66 FR 27215, May 16, 2001 and 66 FR 46221, September 4, 2001). The January 11, 2001 rule specified the requirements for *Aeromonas* monitoring in the UCMR; however, an analytical method for the analysis of *Aeromonas* was not approved as part of that final rule. Today's rule amends the UCMR to specify a method and an associated Minimum Reporting Level (MRL) for monitoring *Aeromonas* on List 2.

The SDWA, as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including acceptable methods for quality control and testing procedures.'' In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA, as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)).

II. Explanation of Today's Action

Prior actions (66 FR 2273, January 11, 2001; and 66 FR 46221, September 4, 2001), specify the methods to be used for analysis of List 2 chemicals. In today's action, EPA is approving the use of EPA Method 1605 for the analysis of *Aeromonas* as specified in List 2 of Table 1 with an MRL of 0.2 Colony Forming Units (CFU)/100 mL.

Today's action also approves EPA Method 515.4 for the determination of 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon; EPA Method 531.2 for the determination of carbofuran and oxamyl; and an additional industry-developed method for the determination of atrazine in drinking water using an immunoassay-based technology and colorimetric determination, in accordance with § 141.24(e), to support monitoring required under § 141.24(h). Today's rule also approves six additional industry-developed methods: a method using a micro-scale hard distillation apparatus followed by colorimetric determination of total cyanide and a method using an ultra-violet digester system for the determination of total and available cyanide, to support monitoring required under § 141.23 (k)(1); a method for the determination of the presence or absence of total coliforms and *E. coli* in drinking waters using a liquid culture, and a membrane filter method for the determination of total coliforms and *E. coli* using a membrane filter enzyme-substrate procedure, for monitoring required under § 141.21; and a method for the determination of heterotrophic bacteria, and a laser based nephelometric method for the determination of turbidity, for monitoring required under § 141.74. With respect to the eighth industry-developed method proposed on March 7, 2002, EPA is deferring a decision on its approval until additional clarifying information from the vendor is evaluated.

In addition, the Presence-Absence (P–A) Coliform Test listed in the total coliform methods table was inadvertently identified as Method 9221. As proposed on March 7, 2002, this has been corrected to 9221 D. Also, detection limits for ''Cyanide'' were added in the ''Detection Limits for Inorganic Contaminants'' table for the two cyanide methods, and minor editorial corrections were made.

The actions taken in this final rule were proposed in the **Federal Register** published on March 7, 2002 (67 FR 10532, March 7, 2002). Twenty-six sets of comments were received concerning this proposal. Those comments which have resulted in EPA modifying what was proposed on March 7, 2002 are discussed in summary form below. More detailed responses to these comments, and to all other comments, are contained in ''Public Comment and Responses for the Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for *Aeromonas.* National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants' which is available in Docket ID No. W–01–13. See Section B. Availability of Related Information for information on contacting the official public docket.

In this final version of the rule, EPA has decided to provide the full titles of the methods approved in this action in footnotes 17 and 18 to the table at § 141.21(k)(1), the footnote in § 141.24(e)(1), and footnotes 11 and 12 to the table at § 141.74(a)(1). Each of these titles were included in the discussions of each method detailed in the proposal to this regulation, published in the **Federal Register** on

March 7, 2002 (67 FR 10532, March 7, 2002). These titles were also on the cover of each method, all of which were available in the Water Docket for this regulation.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is publishing several rule changes related to today's final determination. First, the address for the Water Docket has been updated in § 141.24(e)(1) and in the text accompanying the tables at §§ 141.21(f)(3), 141.23(k)(1), 141.40(a)(3) and 141.74(a)(1) to conform to the Water Docket's new address. Second, the address for the Water Resource Center has been corrected in footnote 6 to the table in § 141.21(f)(3). Finally, the address for the National Technical Information Service was added in footnote 6 to the table at § 141.23(k)(1). EPA has determined that there is ''good cause'' for making these rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct or replace outdated CFR text. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes ''good cause'' under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making these rule changes effective upon publication. 5 U.S.C. 553(d)(3).

III. Summary of Comments Resulting in Changes in the Proposed Action

EPA has received and is reviewing clarifying information concerning the evaluation of the Colitag® Test. Thus, EPA is not taking final action on this method at this time. EPA will respond to all comments regarding this method in a future action.

No comments were received that would warrant delaying final action concerning: EPA Method 515.4 for the determination of 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon; EPA Method 531.2 for the determination of carbofuran and oxamyl; Syngenta AG–625 for the determination of atrazine; QuikChem 10–204–00–1–X or Kelada 01 for the determination of cyanide; Readycult'' Coliforms 100 Presence/Absence Test and Membrane Filter Technique using Chromocult'' Coliform Agar for the determination of total coliforms and *E. coli*; SimPlate for the determination of heterotrophic bacteria; or Hach FilterTrak 10133 for the determination of turbidity. Therefore, these methods are approved for drinking water compliance monitoring as proposed.

One commenter suggested that the entries for cyanide in both of the tables located in § 141.23 were confusing. This commenter suggested that the tables be reordered, so that the analytical methods would be listed in the same order in both tables. This commenter also noted that the footnotes listing whether the method was for the determination of free or total cyanide were in error. In addition, this commenter noted that the detection limit listed for the Kelada 01 method was in error.

EPA agrees with the commenter. The tables in § 141.23 have been reordered, putting the analytical methods listed in the same order. The Agency intends to propose changes to the footnotes listing whether the method was for the determination of free or total cyanide in a future action. The detection limit for the Kelada 01 method has been corrected.

IV. Laboratory Approval and Certification for Aeromonas Monitoring

As a result of today's action, laboratories wishing to analyze samples for *Aeromonas* under the UCMR must use EPA Method 1605. EPA has previously specified, in § 141.40 (a)(5)(ii)(G)(*3*) (66 FR 2273, January 11, 2001), that *Aeromonas* analyses must be performed by laboratories certified under § 141.28 for compliance analyses of coliform indicator bacteria using an EPA approved membrane filtration procedure. Because of differences between EPA Method 1605 and existing membrane filtration methods for coliform indicator bacteria, laboratories performing EPA Method 1605 must also participate in proficiency testing (PT) studies to be conducted by EPA. Laboratories wishing to be approved to use Method 1605 for this monitoring should submit a ''request to participate'' letter to EPA and will be asked to analyze 10 samples for *Aeromonas* using Method 1605. Within 10 days of this rule being signed by the EPA Administrator, EPA will notify each large public water system selected to perform *Aeromonas* monitoring of the need for their laboratory to submit this ''request to participate'' letter. EPA has established 30 days following the publication of the final rule as the latest date by which it will be able to accept the ''request to participate'' letter due to the very short time left before the beginning of the monitoring program (January 2003). The ''request to participate'' letter should be mailed to: Technical Support Center *Aeromonas* PT Coordinator, EPA, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Upon completion of the *Aeromonas* PT Program, EPA will provide each successful laboratory with an approval letter identifying the laboratory by name and the approval date. This letter, and a copy of the laboratory's certification under § 141.28 for compliance analysis of coliform indicator bacteria using an EPA approved membrane filtration procedure, may then be presented to any Public Water System (PWS) as evidence of laboratory approval for *Aeromonas* analysis supporting the UCMR. Laboratory approval is contingent upon the laboratory having and maintaining certification to perform drinking water compliance monitoring using an approved coliform membrane filtration method. EPA will post a list of the laboratories that have successfully completed each PT study at *http//www.epa.gov/safewater/standard/ucmr/aprvlabs.html.*

All large and small systems selected for the Screening Survey will be notified by their State Drinking Water Authority or EPA at least 90 days before the dates established for collecting and submitting UCMR field samples to determine the presence of *Aeromonas.* The PWSs selected to conduct *Aeromonas* monitoring are listed at *http//www.epa.gov/safewater/standard/ucmr/systems.html.* Large systems must send samples to approved laboratories and then report the results to EPA as specified in § 141.35. All shipping and analytical costs incurred by monitoring requirements for small systems will be paid by EPA; however, small systems will be responsible for collecting these samples.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0204. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1896.03) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at: *auby.susan@epa.gov*; or by calling (202) 566–1672. The information requirements are not effective until OMB approves them.

The information to be collected pursuant to today's final rule fulfills the statutory requirements of section 1445(a)(2) of the SDWA, as amended in 1996. The data to be collected will describe the source water, location, and test results for samples taken from PWSs. Reporting is mandatory. § 141.35. The data are not subject to confidentiality protection. The cost estimates described below for *Aeromonas* monitoring are attributed to laboratory fees, shipping costs, and some minimal labor burden for reading of requirements and for collecting samples. For large systems, labor burden estimates also consider activities related to reporting of results to EPA's UCMR database.

Average annual non-labor costs for each large system during the three-year ICR period of 2002–2004 are estimated to be $197. Each large and small system is required to collect *Aeromonas* samples an average of 2 times per year for the 2002–2004 period. EPA will incur no additional labor costs for implementation of today's final rule. The Agency's annual non-labor costs for the ICR period are estimated to be $50,310. These non-labor costs are solely attributed to the cost of sample testing and sample kit shipping for the 180 small systems. Annual costs and burdens are detailed in the following tables. A detailed discussion of these costs was presented in the **Federal Register** published on March 7, 2002 (67 FR 10532, March 7, 2002).

AVERAGE ANNUAL PWS BURDEN AND COST SUMMARY

[2002–2004]

Activity	Annual burden hours	Cost				Annual responses
		Annual labor cost	Annual O&M cost	Annual capital cost	Total annual cost	
180 Small PWSs (serving 10,000 or fewer)	253	$6,086	$0	$0	$6,086	360
120 Large PWSs (greater than 10,000)	100	2,403	23,640	0	26,043	240
Total	353	8,489	23,640	0	32,129	600

BOTTOM LINE ANNUAL BURDEN AND COST

[2002–2004]

Annual number of respondents	300 = 180	Small PWSs (serving 10,000 or fewer).
	+ 120	Large PWSs (serving greater than 10,000).
Total annual responses	600 = 360	Small PWS responses.
	+ 240	Large PWS responses.
Annual number of responses per respondent	2 = 600	Total annual responses from above.
	/300	Total annual respondents from above.
Total annual respondent hours	353 = 253	Small PWS.
	+ 100	Large PWS.
Hours per response	0.59 = 353	Total annual respondent hours from above.
	/600	Total annual responses from above.
Total annual O&M and capital cost	$23,640 = $0	180 small PWSs.
	+ $23,640	120 large PWSs.
Total annual respondent cost	$32,129 = $6,086	180 small PWSs.
	+ $26,043	120 large PWSs.
Total annual hours (resp. plus Agency)	353 = 353	Total annual respondent hours for PWSs.
	+ 0	Total annual EPA hours.
Total annual cost (resp. plus Agency)	$82,440 =	Total annual costs nationally.
	$32,130 +	Total annual respondent costs for PWSs.
	$50,310	Total annual EPA costs

Note that there is no capital cost associated with this Rule. Primacy agencies do not incur any costs associated with this Rule.

Today's rule also approves EPA Methods 515.4 and 531.2 to support monitoring already required under Phase II/V monitoring (§ 141.24), and approves seven additional industry-developed analytical methods. This part of today's final rule merely allows for the use of additional standardized methods, offering systems and their laboratories further operational flexibility. Thus, EPA believes that there is no cost or burden to public water

systems associated with the addition of these additional methods. In addition, because State adoption of analytical methods is voluntary, no costs are estimated for States related to the additional analytical methods that are included in today's final rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 persons or fewer. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7620, February 13, 1998) requested comment, consulted with SBA, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

As for the UCMR, published on September 17, 1999 (64 FR 50555), EPA analyzed separately the impact on small privately and publicly owned water systems because of the different economic characteristics of these ownership types. For publicly owned systems, EPA used the ''revenue test,'' which compares a system's annual costs attributed to the rule with the system's annual revenues. EPA used a ''sales test'' for privately owned systems, which involves the analogous comparison of UCMR-related costs to a privately owned system's sales. Because EPA does not know the ownership types of the systems selected for *Aeromonas* monitoring, the Agency assumes that the distribution of the national representative sample of small systems will reflect the proportions of publicly and privately owned systems in the national inventory (as estimated by EPA's 1995 Community Water System Survey, *http://www.epa.gov/safewater/cwssvr.html*). The estimated distribution of the sample for today's final rule, categorized by ownership type, source water, and system size, is presented in the following table.

NUMBER OF PUBLICLY AND PRIVATELY OWNED SMALL SYSTEMS TO PARTICIPATE IN SCREENING SURVEY 2 FOR AEROMONAS

Size category	Publicly owned systems	Privately owned systems	Total—All Systems
Ground Water Systems			
500 and under	8	29	37
501 to 3,300	35	16	51
3,301 to 10,000	27	7	34
Subtotal Ground	70	52	122
Surface Water Systems			
500 and under	5	13	18
501 to 3,300	10	4	14
3,301 to 10,000	20	6	26
Subtotal Surface	35	23	58
Total	105	75	180

The basis for the UCMR RFA certification for today's final rule, which approves Method 1605 for the analysis of *Aeromonas,* was determined by evaluating the total cost as a percentage of system revenues/sales. In the worst-case-scenario, the smallest system size category (*i.e.*, 500 and under) is estimated to have revenues/sales of approximately $80,000. The total cost attributable to *Aeromonas* monitoring for these 55 systems represents less than 0.2 percent of their annual revenue/sales. The impact for larger systems will be even less significant. EPA specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory

analyses, shipping, and quality control for small entities. EPA incurs the entirety of the non-labor costs associated with *Aeromonas* monitoring, or 89 percent of all costs. Small systems only incur labor costs associated with the collection of *Aeromonas* samples and for reading about their sampling requirements, with an total labor cost per system of UCMR implementation of $101.50.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or for the private sector in any one year. The only costs resulting from today's rule are those associated with the *Aeromonas* screening survey. EPA estimates that the total cost for State, local, and Tribal governments, and the private sector for one year of List 2 Screening Survey monitoring for *Aeromonas* (in 2003) is approximately $247,320, of which EPA will pay $150,930 or approximately 61 percent. The total costs not payed by EPA are $96,390 for the one year of *Aeromonas* monitoring (2003). State drinking water programs are assumed to incur no additional costs associated with the *Aeromonas* Screening Survey component of the UCMR. No costs are estimated/incurred for the other methods included in this final rule since they represent additional methods that public water systems may elect to use but that are not required. This rule does not withdraw earlier versions of methods, and there is no corresponding increase in expenditure or burden. Thus, today's final rule is not subject to the requirements of UMRA sections 202 and 205.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because EPA will pay for the reasonable costs of testing for the small PWSs required to sample and test for *Aeromonas* under this final rule, including those owned and operated by small governments. The only costs that small systems will incur are those attributed to collecting the *Aeromonas* samples and packing them for shipping to the laboratory (EPA will also pay for shipping). These costs are minimal, and are neither significant nor unique. For the reasons stated above, no costs are estimated/incurred for the other methods. Thus, today's rule is not subject to the requirements of UMRA section 203.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The objective of this final rule is to specify approved analytical methods, thereby allowing *Aeromonas* to be included in the UCMR Screening Survey program and approving EPA Methods 515.4 and 531.2 and seven additional industry-developed methods that public water systems may use to conduct analyses previously required. The cost to State and local governments is minimal, and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. No comments were received that concerned issues covered by Executive Order 13132.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, titled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsiblitities between the Federal government and Indian tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The objective of this final rule is to specify approved analytical methods, thereby allowing *Aeromonas* to be included in the UCMR Screening Survey program and approving EPA Methods 515.4, 531.2 and seven additional industry-developed methods that public water systems may use to conduct analyses previously required. Only one small Indian Tribal system was selected for

Aeromonas monitoring. Since this utility will be receiving sampling assistance from the State of Montana and EPA will pay for all shipping and analysis costs, the cost to the Tribal government will be minimal. The rule does not preempt Tribal law. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials. No comments concerning Tribal issues were received.

G. Executive Order 13045—Protection of Children From Environmental Health Risks & Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866. Further, this final rule does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. EPA identified no voluntary consensus standards for *Aeromonas.* Therefore, EPA has approved only EPA Method 1605 for *Aeromonas* monitoring.

Concerning the approval of EPA Method 515.4, while the Agency identified two new voluntary consensus methods (American Society for Testing and Materials (ASTM) D5317–98, and SM 6640 B) for the chlorinated acids as being potentially applicable, they are not included in this rule. EPA has decided not to approve SM 6640 B because the use of this voluntary consensus standard would have been impractical due to significant shortcomings in the sample preparation and quality control sections of the method instructions. Section 1b of Method SM 6640 B states that the alkaline wash detailed in section 4b2 is optional. The hydrolysis that occurs during this step is essential to the analysis of the esters of many of the analytes. Therefore, this step is necessary and cannot be optional. In addition, the method specifies that the quality control limits for laboratory fortified blanks are to be based upon plus or minus three times the standard deviation of the mean recovery of the analytes, as determined in each laboratory. Therefore, this method permits unacceptably large control limits which may include 0 percent recovery. ASTM D5317–98 specifies acceptance windows for the initial demonstration of proficiency for laboratory fortified blank samples that are as small as 0 percent to as large as 223 percent recovery for picloram, with tighter criteria for other regulated contaminants. Therefore, this method permits unacceptably large control limits which include 0 percent recovery. Since SM 6640 B has significant shortcomings in the sample preparation and quality control sections and D5317–98 has unacceptably large quality control limits use of these methods for drinking water analysis is impractical. Therefore, EPA is approving only EPA Method 515.4 for the chlorinated acids at this time.

Concerning the approval of EPA Method 531.2, while the Agency identified two new voluntary consensus methods (Standard Method 6610, 20th Edition, and Standard Method 6610, 20th Supplemental Edition) as being potentially applicable for the analysis of carbamates, the Agency is not approving them in this rulemaking. Standard Method 6610, 20th Edition has recently been approved for compliance monitoring. Standard Method 6610, 20th Supplemental Edition permits the use of a strong acid, hydrochloric acid (HCL), as a preservative. The preservatives in all of the other approved EPA and Standard Methods procedures for these analytes are weak acids that adjust the pH to a specific value based upon the pKa of the preservative. The use of HCL would require accurate determinations of the pH of the sample in the field and could be subject to considerable error and possible changes in pH upon storage. Although not specifically observed for oxamyl or carbofuran during the development of similar methods, structurally similar pesticides have been shown to degrade over time when kept at pH 3. Therefore, approval of this method is impractical because it specifies the use of a strong acid (HCL) when positive control of the pH is critical. Therefore, EPA is approving only EPA Method 531.2 for determining oxamyl and carbofuran.

The seven other analytical methods being approved in this regulation are additional analytical methods for use in drinking water compliance monitoring, submitted to EPA by industry. These industry-developed methods will supplement existing approved methods, some of which are voluntary consensus standards.

J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994), focuses Federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. This regulation adds new analytic methods to part 141. It does not withdraw any currently approved methods nor does it add or alter any current monitoring requirement. The purpose of this regulation is to provide additional analytical methods for

drinking water utilities to use to meet the currently existing monitoring requirements. EPA has determined that there are no environmental justice issues in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 29, 2002.

L. Administrative Procedures Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is publishing several rule changes related to today's action that were not included in the proposal. First, the address for the Water Docket has been corrected in § 141.24(e)(1) and in the text accompanying the tables at §§ 141.21(f)(3), 141.23(k)(1), 141.40(a)(3) and 141.74(a)(1). Second, the address for the Water Resource Center has been corrected in footnote 6 to the table in § 141.21(f)(3). Finally, the address for the National Technical Information Service was added in footnote 6 to the table at § 141.23(k)(1). EPA has determined that there is ''good cause'' for making these rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct or replace outdated CFR text. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes ''good cause'' under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making these rule changes effective upon publication. 5 U.S.C. 553(d)(3).

M. Plain Language Directive

Executive Order 12866 calls for each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible. Today's final rule language is largely in a table format consistent with the format of the CFR sections being amended.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 18, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended:

a. By revising the Table in paragraph (f)(3);

b. By adding paragraphs (f)(6) (viii) and (ix).

The revision and additions read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

Organism	Methodology [12]	Citation [1]
Total Coliforms [2]	Total Coliform Fermentation Technique [3,4,5]	9221A, B
	Total Coliform Membrane Filter Technique [6]	9222 A, B, C
	Presence-Absence (P–A) Coliform Test [5,7]	9221 D
	ONPG–MUG Test [8]	9223
	Colisure Test [9]	
	E*Colite® Test [10]	
	m-ColiBlue24® Test [11]	
	Readycult® Coliforms 100 Presence/Absence Test [13]	
	Membrane Filter Technique using Chromocult® Coliform Agar [14]	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 8, 9, 10, 11, 13 and 14 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW, EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. 20408.

[1] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used.

[2] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 deg. C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than 10 percent.

[4] If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] MI agar also may be used. Preparation and use of MI agar is set forth in the article, ''New medium for the simultaneous detection of total coliform and *Escherichia coli* in water'' by Brenner, K.P., et. al., 1993, Appl. Environ. Microbiol. 59:3534–3544. Also available from the Office of Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW, Washington DC, 20460, EPA/600/J–99/225. Verification of colonies is not required.

[7] Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.
[8] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.
[9] A description of the Colisure Test, Feb 28, 1994, may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092. The Colisure Test may be read after an incubation time of 24 hours.
[10] A description of the E*Colite® Test, ''Presence/Absence for Coliforms and *E. Coli* in Water,'' Dec 21, 1997, is available from Charm Sciences, Inc., 36 Franklin Street, Malden, MA 02148–4120.
[11] A description of the m-ColiBlue24® Test, Aug 17, 1999, is available from the Hach Company, 100 Dayton Avenue, Ames, IA 50010.
[12] EPA strongly recommends that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring total coliforms. EPA also encourages laboratories to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. The Agency suggests that laboratories perform these studies on a minimum of 5% of all total coliform-positive samples, except for those methods where verification/confirmation is already required, *e.g.*, the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test. Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for β–galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies and/or from the manufacturer(s).
[13] The Readycult® Coliforms 100 Presence/Absence Test is described in the document, ''Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichla coli* in Finished Waters'', November 2000, Version 1.0, available from EM Science (an affiliate of Merck KGgA, Darmstadt Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297. Telephone number is (800) 222–0342, e-mail address is: adellenbusch@emscience.com.
[14] Membrane Filter Technique using Chromocult® Coliform Agar is described in the document, ''Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichla coli* in Finished Waters'', November 2000, Version 1.0, available from EM Science (an affiliate of Merck KGgA, Darmstadt Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297. Telephone number is (800) 222–0342, e-mail address is: *adellenbusch@emscience.com.*

* * * * *

(6) * * *

(viii) Readycult® Coliforms 100 Presence/Absence Test, a description of which is cited in footnote 13 to the table at paragraph (f)(3) of this section.

(ix) Membrane Filter Technique using Chromocult® Coliform Agar, a description of which is cited in footnote 14 to the table at paragraph (f)(3) of this section.

* * * * *

3. Section 141.23 is amended by revising the entry for ''Cyanide'' in the table in paragraph (a)(4)(i) and in the table in paragraph (k)(1) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/L)	Methodology	Detection limit (mg/L)
*	*	* * * * *	*
Cyanide	0.2	Distillation, Spectrophotometric [3]	0.02
		Distillation, Automated, Spectrophotometric [3]	0.005
		Distillation, Amenable, Spectrophotometric [4]	0.02
		Distillation, Selective Electrode [3]	0.05
		UV, Distillation, Spectrophotometric	0.0005
		istillation, Spectrophotometric	0.0006
*	*	* * * * *	*

[3] Screening method for total cyanides.
[4] Measures ''free'' cyanides.

* * * * *

(k) * * *

(1) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
*	*	*	*	*	*
12. Cyanide:					
Manual Distillation followed by.		D2036–98A	4500–CN^- C	4500–CN^- C.	
Spectrophotometric Manual.		D2036–98A	4500–CN^- E	4500–CN^- E	I–3300-85 [5]
Spectrophotometric Semi-automated.	335.4 [6]				
Spectrophotometric, Amenable.		D2036–98B	4500–CN^- G	4500–CN^- G.	
Selective Electrode			4500–CN^- F	4500–CN^- F.	
UV/Distillation/ Spectrophotometric.					Kelada 01 [17]
Distillation/ Spectrophotometric.					QuikChem 10–204–00–1–X [18]

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
*	*	*	*	*	*

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11,16 and 17–18 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[3] *Annual Book of ASTM Standards,* 1994, 1996, or 1999, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111B, 3111D, 3113B and 3114B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd ed.,1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821. Available at NTIS, PB94–120821, 5285 Port Royal Road, Springfield, VA 22161. The toll free telephone number is 800–553–6847.

* * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.*, no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

* * * * *

[17] The description for the Kelada 01 Method, ''Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, And Thiocyanate'', Revision 1.2, August 2001, EPA # 821–B–01–009 for cyanide is available from the National Technical Information Service (NTIS), PB 2001–108275, 5285 Port Royal Road, Springfield, VA 22161. The toll free telephone number is 800–553–6847.

[18] The description for the QuikChem Method 10–204–00–1-X, ''Digestion and distillation of total cyanide in drinking and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis'', Revision 2.1, November 30, 2000 for cyanide is available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218, USA. Phone: 414–358–4200.

* * * * *

4. Section 141.24 is amended by revising paragraph (e)(1), introductory text and the table in paragraph (e)(1) to read as follows:

§ 141.24 Organic chemical, sampling and analytical requirements.

* * * * *

(e) * * *

(1) The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Method 508A and 515.1 are in *Methods for the Determination of Organic Compounds in Drinking Water,* EPA/600/4–88–039, December 1988, Revised, July 1991. Methods 547, 550 and 550.1 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement I,* EPA/600–4–90–020, July 1990. Methods 548.1, 549.1, 552.1 and 555 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement II,* EPA/600/R–92–129, August 1992. Methods 502.2, 504.1, 505, 506, 507, 508, 508.1, 515.2, 524.2, 525.2, 531.1, 551.1 and 552.2 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement III,* EPA/600/R–95–131, August 1995. Method 1613 is titled ''Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS'', EPA/821–B–94–005, October 1994. These documents are available from the National Technical Information Service, NTIS PB91–231480, PB91–146027, PB92–207703, PB95–261616 and PB95–104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Method 6651 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association (APHA); any of these three editions may be used. Method 6610 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater, (18th Edition Supplement)* (1994), or with the 19th edition (1995) or 20th edition (1998) of *Standard Methods for the Examination of Water and Wastewater*; any of these three editions may be used. The APHA documents are available from APHA, 1015 Fifteenth Street NW., Washington, D.C. 20005. Other required analytical test procedures germane to the conduct of these analyses are contained in *Technical Notes on Drinking Water Methods,* EPA/600/R–94–173, October 1994, NTIS PB95–104766. EPA Methods 515.3 and 549.2 are available from U.S. Environmental Protection Agency, National Exposure Research Laboratory (NERL)-Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268. ASTM Method D 5317–93 is available in the *Annual Book of ASTM Standards,* (1999), Vol. 11.02, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or in any edition published after 1993. EPA Method 515.4, ''Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Microextraction, Derivatization and Fast Gas Chromatography with Electron Capture Detection,'' Revision 1.0, April 2000, EPA /815/B–00/001 can be accessed and downloaded directly on-line at *www.epa.gov/safewater/methods/sourcalt.html.* The Syngenta AG–625, ''Atrazine in Drinking Water by Immunoassay'', February 2001 is available from Syngenta Crop Protection, Inc., 410 Swing Road, Post Office Box 18300, Greensboro, NC

27419, Phone number (336) 632–6000. Method 531.2 ''Measurement of N-methylcarbamoyloximes and N-methylcarbamates in Water by Direct Aqueous Injection HPLC with Postcolumn Derivatization,'' Revision 1.0, September 2001, EPA 815/B/01/002 can be accessed and downloaded directly on-line at *www.epa.gov/safewater/methods/sourcalt.html.*

Contaminant	EPA method [1]	Standard methods	ASTM	Other
1. Benzene	502.2, 524.2.			
2. Carbon tetrachloride	502.2, 524.2, 551.1.			
3. Chlorobenzene	502.2, 524.2.			
4. 1,2-Dichlorobenzene	502.2, 524.2.			
5. 1,4-Dichlorobenzene	502.2, 524.2.			
6. 1,2-Dichloroethane	502.2, 524.2.			
7. cis-Dichloroethylene	502.2, 524.2.			
8. trans-Dichloroethylene	502.2, 524.2.			
9. Dichloromethane	502.2, 524.2.			
10. 1,2-Dichloropropane	502.2, 524.2.			
11. Ethylbenzene	502.2, 524.2.			
12. Styrene	502.2, 524.2.			
13. Tetrachloroethylene	502.2, 524.2, 551.1.			
14. 1,1,1-Trichloroethane	502.2, 524.2, 551.1.			
15. Trichloroethylene	502.2, 524.2, 551.1.			
16. Toluene	502.2, 524.2.			
17. 1,2,4-Trichlorobenzene	502.2, 524.2.			
18. 1,1-Dichloroethylene	502.2, 524.2.			
19. 1,1,2-Trichloroethane	502.2, 524.2, 551.1.			
20. Vinyl chloride	502.2, 524.2.			
21. Xylenes (total)	502.2, 524.2.			
22. 2,3,7,8-TCDD (dioxin)	1613.			
23. 2,4-D [4] (as acid, salts and esters)	515.2, 555, 515.1, 515.3, 515.4.	.....	D5317–93.	
24. 2,4,5-TP [4] (Silvex)	515.2, 555, 515.1, 515.3, 515.4.	.....	D5317–93.	
25. Alachlor [2]	507, 525.2, 508.1, 505, 551.1.			
26. Atrazine [2]	507, 525.2, 508.1, 505, 551.1.	.....	.....	Syngenta AG–625.
27. Benzo(a)pyrene	525.2, 550, 550.1.			
28. Carbofuran	531.1, 531.2	6610.		
29. Chlordane	508, 525.2, 508.1, 505.			
30. Dalapon	552.1, 515.1, 552.2, 515.3, 515.4.			
31. Di(2-ethylhexyl)adipate	506, 525.2.			
32. Di(2-ethylhexyl)phthalate	506, 525.2.			
33. Dibromochloropropane (DBCP)	504.1, 551.1.			
34. Dinoseb [4]	515.2, 555, 515.1, 515.3, 515.4.			
35. Diquat	549.2.			
36. Endothall	548.1.			
37. Endrin	508, 525.2, 508.1, 505, 551.1.			
38. Ethylene dibromide (EDB)	504.1, 551.1.			
39. Glyphosate	547	6651.		
40. Heptachlor	508, 525.2, 508.1, 505, 551.1.			
41. Heptachlor Epoxide	508, 525.2, 508.1, 505, 551.1.			

Contaminant	EPA method [1]	Standard methods	ASTM	Other
42. Hexachlorobenzene	508, 525.2, 508.1, 505, 551.1.			
43. Hexachlorocyclopentadiene	508, 525.2, 508.1, 505, 551.1.			
44. Lindane	508, 525.2, 508.1, 505, 551.1.			
45. Methoxychlor	508, 525.2, 508.1, 505, 551.1.			
46. Oxamyl	531.1, 531.2	6610.		
47. PCBs [3] (as decachlorobiphenyl)	508A.			
48. PCBs [3] (as Aroclors)	508.1, 508, 525.2, 505.			
49. Pentachlorophenol	515.2, 525.2, 555, 515.1, 515.3, 515.4.		D5317–93.	
50. Picloram [4]	515.2, 555, 515.1, 515.3, 515.4.		D5317–93.	
51. Simazine [2]	507, 525.2, 508.1, 505, 551.1.			
52. Toxaphene	508, 508.1, 525.2, 505.			
53. Total Trihalomethanes	502.2, 524.2, 551.1.			

[1] For previously approved EPA methods which remain available for compliance monitoring until June 1, 2001, see paragraph (e)(2) of this section.

[2] Substitution of the detector specified in Method 505, 507, 508 or 508.1 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen phosphorous detector may be used provided all regulatory requirements and quality control criteria are met.

[3] PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl. Users of Method 505 may have more difficulty in achieving the required detection limits than users of Methods 508.1, 525.2 or 508.

[4] Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3, 515.4 and 555 and ASTM Method D5317–93.

* * * * *

5. Section 141.40 is amended by revising in Table 1, the second ''List 2—Screening Survey Microbiological Contaminants to be sampled after notice of analytical methods availability'' under paragraph (a)(3), and revising footnote h, to read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) * * *

(3) * * *

TABLE 1. UNREGULATED CONTAMINANT MONITORING REGULATION (1999) LIST

* * * * * * *

LIST 2—SCREENING SURVEY MICROBIOLOGICAL CONTAMINANTS TO BE SAMPLED

1—contaminant	2—identification number	3—analytical methods	4—minimum reporting level	5—sampling location	6—period during which monitoring to be completed
Aeromonas	NA	EPA Method 1605 [h]	0.2—CFU/100mL [f]	Distribution System [g]	2003

Column headings are:

1—Chemical or microbiological contaminant: the name of the contaminants to be analyzed.

2—CAS (Chemical Abstract Service Number) Registry No. or Identification Number: a unique number identifying the chemical contaminants.

3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants.

4—Minimum Reporting Level: the value and unit of measure at or above which the concentration or density of the contaminant must be measured using the Approved Analytical Methods.

5—Sampling Location: the locations within a PWS at which samples must be collected.

6—Years During Which Monitoring to be Completed: the years during which the sampling and testing are to occur for the indicated contaminant.

The procedures shall be done in accordance with the documents listed next in these footnotes. The incorporation by reference of the following documents listed in footnotes a-c and h was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the following sources. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Copies of the documents may be obtained from the sources listed in these footnotes. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–476–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of FEDERAL REGISTER, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[f] Minimum Reporting Level represents the value of the lowest concentration precision and accuracy determination made during methods development and documented in the method. If method options are permitted, the concentration used was for the least sensitive option.

[g] Three samples must be taken from the distribution system, which is owned or controlled by the selected PWS. The sample locations must include one sample from a point (MD from § 141.35(d)(3), Table 1) where the disinfectant residual is representative of the distribution system. This sample location may be selected from sample locations which have been previously identified for samples to be analyzed for coliform indicator bacteria. Coliform sample locations encompass a variety of sites including midpoint samples which may contain a disinfectant residual that is typical of the system. Coliform sample locations are described in 40 CFR 141.21. This same approach must be used for the *Aeromonas* midpoint sample where the disinfectant residual would not have declined and would be typical for the distribution system. Additionally, two samples must be taken from two different locations: The distal or dead-end location in the distribution system (MR from § 141.35(d)(3), Table 1), avoiding disinfectant booster stations, and from a location where previous determinations have indicated the lowest disinfectant residual in the distribution system (LD from § 141.35(d)(3), Table 1). If these two locations of distal and low disinfectant residual sites coincide, then the second sample must be taken at a location between the MD and MR sites. Locations in the distribution system where the disinfectant residual is expected to be low are similar to TTHM sampling points. Sampling locations for TTHMs are described in 63 FR 69468.

[h] EPA Method 1605 ''*Aeromonas* in Finished Water by Membrane Filtration using Ampicillin-Dextrin Agar with Vancomycin (ADA–V)'', October 2001, EPA # 821–R–01–034. The method can be accessed and downloaded directly on-line at *www.epa.gov/microbes*.

* * * * *

6. Section 141.74 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

Organism	Methodology	Citation [1]
Total Coliform [2]	Total Coliform Fermentation Technique [3 4 5]	9221 A, B, C
	Total Coliform Membrane Filter Technique [6]	9222 A, B, C
	ONPG-MUG Test [7]	9223
Fecal Coliforms [2]	Fecal Coliform Procedure [8]	9221 E
	Fecal Coliform Filter Procedure	9222 D
Heterotrophic bacteria [2]	Pour Plate Method	9215 B
	SimPlate [11].	
Turbidity	Nephelometric Method	2130 B
	Nephelometric Method	180.1 [9]
	Great Lakes Instruments	Method 2 [10]
	Hach FilterTrak	10133 [12]

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 7 and 9–12 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20408.

[1] Except where noted, all methods refer to *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours. Systems must hold samples below 10 deg. C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] MI agar also may be used. Preparation and use of MI agar is set forth in the article, ''New medium for the simultaneous detection of total coliform and *Escherichia coli* in water'' by Brenner, K.P., et. al., 1993, Appl. Environ. Microbiol. 59:3534–3544. Also available from the Office of Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, EPA/600/J–99/225. Verification of colonies is not required.

[7] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.

[8] A–1 Broth may be held up to three months in a tightly closed screw cap tube at 4 deg. C.

[9] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93/100, August 1993. Available at NTIS, PB94–121811.

[10] GLI Method 2, ''Turbidity'', November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

[11] A description of the SimPlate method, ''IDEXX SimPlate TM HPC Test Method for Heterotrophs in Water'', November 2000, can be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092, telephone (800) 321–0207.

[12] A description of the Hach FilterTrak Method 10133, ''Determination of Turbidity by Laser Nephelometry'', January 2000, Revision 2.0, can be obtained from; Hach Co., P.O. Box 389, Loveland, Colorado 80539–0389. Phone: 800–227–4224.

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[FR Doc. 02–27133 Filed 10–28–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 102302A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12 noon, local time, October 25, 2002, through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305, fax 727–570–5583, e-mail Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached on October 24, 2002. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12 noon, local time, October 25, 2002, through June 30, 2003, the end of the fishing year. The boundary between the eastern and western zones is 87°31′06''W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion (manner) to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27504 Filed 10–24–02; 3:51 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020606142–2234–02; I.D. 041802F]

RIN 0648–AP39

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Experimental Setnet Sablefish Landings To Qualify Limited Entry Sablefish-Endorsed Permits for Tier Assignment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical correction.

SUMMARY: NMFS announces approval of a regulatory amendment to revise sablefish tier qualifications for the limited entry, fixed gear, primary sablefish fishery. NMFS issues this final rule to amend tier qualifications to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38° N. latitude (lat.). Setnet EFP landings will be added to the current pot (trap) and longline landings to qualify a sablefish-endorsed permit for its tier assignment. This rule is intended to recognize historical sablefish landings made by current primary season participants.

DATES: Effective October 24, 2002.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) for this action are available from Donald McIsaac,

Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220. Copies of the final regulatory flexibility analysis (FRFA) are available form D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and email: yvonne.dereynier@noaa.gov, jamie.goen@noaa.gov; or Svein Fougner (Southwest Region, NMFS), phone: 562–980–4040; fax: 562–980–4047; and email: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is available on the Government Printing Office's website at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Background

On June 24, 2002, NMFS published a proposed rule (67 FR 42525) based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS requested public comments on the proposed rule through July 24, 2002. No comments were received. NMFS issues this final rule to amend tier qualifications for the limited entry, fixed gear, primary sablefish fishery to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38° N. lat. The background and rationale for this rule are discussed in the preamble to the proposed rule published on June 24, 2002 (67 FR 42525). Additional information is available in the EA/RIR/IRFA prepared by the Council for this action (see **ADDRESSES**). Detailed information regarding the management history of the limited entry, fixed gear, sablefish-endorsed fishery, including the 3–tier program is available in the preamble to the proposed rule for that program at 63 FR 19878, April 22, 1998.

During 1984–1985, some vessels that had historically participated in the pot or longline sablefish fishery chose instead to participate in an EFP to test sablefish catchability with setnet gear north of 38° N. lat. If those vessels had not participated in the setnet EFP and had fished for sablefish with pot or longline gear during 1984–1985 as usual, the EFP vessels may have qualified for a higher tier assignment.

So as not to discourage future participation in EFPs, the Council recommended that NMFS include EFP setnet landings from 1984–1987 in the qualifying requirements for tier assignment for those fixed gear vessels that had already qualified for a sablefish endorsement. However, NMFS did not issue any setnet EFPs after 1985. Therefore, NMFS will amend the regulations at 50 CFR part 660 to include landings of sablefish taken with setnet gear north of 38° N. lat. under the provisions of an EFP issued by NMFS in 1984–1985 when determining tier qualifications for permits that already have a sablefish endorsement.

Corrections to 50 CFR Part 660

NMFS will make technical corrections to 50 CFR part 660 Subpart A, Subpart B, Subpart C, Subpart D, Subpart E, Subpart F, Subpart G, and Subpart H to correct an outdated title of an agency official.

NMFS will also make technical corrections to the groundfish regulations at 50 CFR part 660. The first correction will add clarifying language to § 660.323(a)(4)(vi) to connect activities authorized under other paragraphs, such that if a whiting reapportionment authorized under § 660.323(a)(4)(iv) were to occur, the re-opening of primary whiting season described at § 660.323(a)(3)(i) is included in the list of Federal actions to be announced at § 660.323(a)(4)(vi). The second correction will update the title of an agency official referenced in § 660.324(d) and § 660.350(b)(3). The third correction will amend a cross reference in § 660.324(f), and § 660.325(d)(2) and (e)(1). These corrections are technical amendments to the groundfish regulations and will not change the effect of the regulations on fisheries entities or resources.

Comments and Responses

No comments were received during the comment period for the proposed rule (67 FR 42525, June 24, 2002), which ended July 24, 2002.

Changes from the Proposed Rule

This final rule includes two minor changes to the regulatory text from the proposed rule. In § 660.334, paragraph (d)(3)(ii), the last sentence was replaced with a sentence specifying what is meant by ''application.'' The replacement sentence reads, ''The application shall consist of a written letter stating the applicant's circumstances, requesting action, be signed by the applicant, and submitted along with the relevant documentation (fish tickets) in support of the application for a change in tier status.'' In § 660.334, paragraph (d)(3)(iii), the word ''certificate'' was replaced with the word ''permit''.

Classification

Under 5 U.S.C. 553 (d)(1), the Assistant Administrator for Fisheries, NOAA waives the 30–day delay in effectiveness for this rule as it relieves a restriction. This rule is intended to recognize historical sablefish landings made by current primary season participants. This rule relieves a restriction by removing an inequity that has been in place since 1998 due to the tier qualification requirements established for the original tier assignments. This restriction is preventing those sablefish-endorsed permit owners who participated in the setnet EFP from 1984–1985 from using their setnet EFP sablefish landings during this period to qualify for tier assignments. This restriction has kept some vessels from possibly qualifying for a higher tier assignment and has thus restricted their ability to land more sablefish each year since 1998. This rule relieves the restriction by allowing sablefish-endorsed permit owners who participated in setnet EFPs during 1984–1985 to submit those setnet EFP sablefish landings to qualify for a higher tier designation. Delaying effectiveness of this rule would unnecessarily perpetuate the inequity by not allowing fishermen who qualify for a higher tier assignment access to increased sablefish landings associated with the higher tier during the 2002 primary season. The primary sablefish season for 2002 is from April 1 - October 31. The 30–day delay in effectiveness would not allow fishermen adequate time to apply for a tier upgrade based on setnet EFP sablefish landings and would not allow NMFS time to process that application before the end of the 2002 primary season.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared a FRFA describing the impact of this action on small entities. The IRFA was summarized in the proposed rule on June 24, 2002 (67 FR 42525). The following is the summary of the FRFA.

Because the Council omitted setnet landings made under EFPs from the qualifying requirements for the 3–tier limited entry fixed gear sablefish fishery, this regulatory amendment is intended to recognize those historical sablefish landings made by current primary season participants. Qualifying

requirements under subsequent amendments to the limited entry fixed gear sablefish fishery were low enough that the issue of whether to include setnet EFP landings did not come up. After implementation of the 3–tier program, the issue of whether to include setnet landings to qualify for tier assignment was brought to the Council's attention through an appeal process provided for in the 3–tier program's regulations.

In the case of the setnet fishery north of 38° N. lat., some vessels that had historically participated in the sablefish fishery chose instead to participate in an EFP to test sablefish catchability with setnet gear north of 38° N. lat. If those vessels had not participated in the setnet EFP and had fished for sablefish with pot or longline gear during 1984–1985 as usual, the vessels may have qualified for higher tier assignments. It is inequitable to exclude setnet EFP landings in the tier qualifications for a vessel that historically participated in the fixed gear sablefish fishery and could have qualified for a higher tier had it not participated in the EFP.

In addition, those who participated in the EFPs with setnet gear believed they were investing in the future of the fixed gear fishery and took part in the fishery with Council consent. If, in determining the level of a permit's qualification for harvest privileges the Council and NMFS had decided to disallow landings taken under the setnet EFPs, they could have discouraged fishers from taking part in experimental fisheries in the future. A public policy that discourages participation in EFPs would inhibit useful innovation in the fishery.

The comment period on the proposed rule (67 FR 42525, June 24, 2002) for this action ended on July 24, 2002. The agency did not receive any public comments on the proposed rule or the IRFA during the comment period.

This rule will apply to owners of limited entry fixed gear sablefish permits that have a catch history that includes sablefish fishing with setnet gear under an experimental fishing permit. While two owners qualify for the provisions under this rule, only one is expected to have sufficient setnet landings to move his permit to a higher sablefish tier. The other owner already has the highest sablefish tier, Tier 1, and could not increase his tier assignment by including setnet EFP landings in his qualifications. All other limited entry fixed gear sablefish permit owners will be modestly affected by a shift of sablefish allocation toward the one owner with setnet EFP landings history.

The only reporting or recordkeeping requirement associated with this rule is a one-time application process requesting that setnet EFP landings be included in sablefish tier qualifications. The application consists of a letter requesting action together with any relevant evidence, in this case fish tickets, to be submitted to NMFS Sustainable Fisheries Division by the party wishing to qualify for a higher tier based on setnet EFP landings. The application process for a tier upgrade will be open for a window period starting when the final rule is published until December 31, 2002.

Compliance requirements do not go beyond general compliance requirements for operating in the Pacific coast primary sablefish fishery. The primary sablefish fishery has been managed under the 3–tier system since 1998, so the concept and the compliance requirements associated with the concept are well understood. No specialized skills are needed for meeting these compliance requirements.

The range of alternatives considered to count setnet EFP sablefish landings toward tier qualifications were from giving vessels no credit for setnet landings (no action); partial credit for the landings, or 100 percent credit for the landings (adopted action). There is no apparent rationale to guide the selection of the partial credit approach. Therefore, the partial credit approach risked being arbitrary and capricious and intermediate options were not analyzed. The intermediate alternatives considered but not analyzed included allowing vessels with setnet landings to qualify for a higher tier for a temporary period of time or creating an intermediate tier level for which vessels with setnet landings might qualify. The provision of higher levels of access for a temporary period has been used in the past as a way of reducing the negative effects of disruption in the fishery while small businesses make a transition to new restrictions (e.g., the ''B'' permits that were provided in Amendment 6 and grandfather provisions in Amendment 14). However, in this case, vessels have been operating under the three-tier system since 1998, and have likely already made transitions. Additionally, creating a temporary higher tier doesn't address, over the long-term, the issue of unfairness to historical fixed gear sablefish fishermen who chose to participate in the setnet EFP instead and were penalized when the tier system was created. Thus, a temporary higher tier might still discourage future participation in EFPs. Therefore, the intermediate alternative of a temporary higher tier does not address the purpose and need of the proposed action. Similarly, creation of an intermediate tier level to provide some accommodation for vessels with setnet landings would present a problem similar to that of giving partial credit for setnet landings, (i.e., identification of a rational basis for setting the level of harvest for the intermediate tier). Creation of a new intermediate tier would also make the management system more complex.

The expected net effects between no action and the adopted action are primarily reallocational in nature. Under the adopted action, the amount of reallocation is less than three quarters of one percent of the allocation to the primary fixed gear sablefish fishery, with less than one quarter of one percent moving between gear types (from pot to longline). The permits for some vessels may be reassigned to higher tiers, resulting in a reduction in the cumulative limits for all permits in all tiers. None of the alternatives considered would change the amount of fixed gear sablefish harvested or change managers' ability to control harvest. The adopted alternative will not adversely impact the sablefish stock, other species, or the ocean environment. This action is being proposed to address fairness and equity considerations and to avoid discouraging future innovation through EFPs (innovation may directly contribute to meeting the objectives of the FMP and Magnuson-Stevens Act national standard guidelines). It was for these reasons that NMFS and the Council adopted the action to include setnet EFP sablefish landings in tier qualifications, which will be implemented through this final rule. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

This rule contains a collection-of-information requirement that can only apply to two individuals according to the requirements of the rule that applicants are sablefish-endorsed permit owners who participated in setnet EFPs between 1984–1985. Therefore, because this rule applies to less than 10 people, it is not subject to the requirements of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator, for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660— FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 660.324 [Amended]

2. In § 660.324, paragraph (d) remove the words ''Regional Director'' and add in their place, ''Regional Administrator'', and in Paragraph (f) remove the words ''subpart C'' and add in their place, ''§ 660.331 through § 660.341''.

3. In § 660.334, paragraphs (d)(2) and (3) are redesignated as paragraphs (d)(3) and (4), respectively, a new paragraph (d)(2) is added; the newly redesignated paragraphs (d)(3) and (d)(4) are revised to read as follows:

§ 660.334 Limited entry permits endorsements.

* * * * *

(d)* * *

(2) Endorsement and tier assignment qualifying criteria.

(i) Permit catch history. Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement and to determine the appropriate tier assignment for endorsed permits. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full ''A'' permit was ultimately granted will also be considered part of the catch history of the ''A'' permit. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. If the current permit is the result of the combination of multiple permits, the combined catch histories of all of the permits that were combined to create a new permit before March 12, 1998, will be used in calculating the tier assignment for the resultant permit, together with any catch history (during the qualifying period) of the resultant permit. Only sablefish catch regulated by this part that was taken with longline or trap (pot) gear will be considered for the sablefish endorsement, except that vessels qualifying for the sablefish endorsement based on longline or trap (pot) landings may include setnet sablefish landings defined at (d)(2)(ii)(B) of this section in meeting tier assignment qualifications. Sablefish harvested illegally or landed illegally will not be considered for this endorsement.

(ii) Sablefish endorsement tier assignments. Only limited entry, fixed gear permits with sablefish endorsements will receive cumulative trip limit tier assignments.

(A) The qualifying weight criteria for Tier 1 are at least 898,000 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984–1994. The qualifying weight criteria for Tier 2 are at least 380,000 lb (172,365 kg), but no more than 897,999 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984–1994. Fixed gear permits with less than 380,000 lb (172,365 kg) cumulative round weight of sablefish caught over the years 1984–1994 qualify for Tier 3. All qualifying sablefish landings must be caught with longline or trap (pot), although setnet landings defined at subparagraph (B) of this section may also be included in tier assignment qualifying landings. Sablefish taken in tribal set aside fisheries does not qualify.

(B) Setnet sablefish landings are included in sablefish endorsement tier assignment qualifying criteria if those landings were made north of 38° N. lat. under the authority of an EFP issued by NMFS in any of the years 1984–1985, by a vessel that landed at least 16,000 lb (7,257 kg) of sablefish with longline or trap (pot) gear in any one year between 1984–1994.

(iii) Evidence and burden of proof. A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (pot) gear applying for a sablefish endorsement or a tier assignment under this section has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best evidence of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(C) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(D) Such other relevant, credible evidence as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) Issuance process for sablefish endorsements and tier assignments. (i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) All tier assignments and subsequent appeals processes were completed by September 1998. If, however, a permit owner with a sablefish endorsement believes that his permit may qualify for a change in tier status based on qualifications in paragraph (d)(2)(ii)(B) of this section, the SFD will accept applications for a tier change through December 31, 2002. The application shall consist of a written letter stating the applicant's circumstances, requesting action, be signed by the applicant, and submitted along with the relevant documentation (fish tickets) in support of the application for a change in tier status.

(iii) After review of the evidence submitted under paragraph (ii), and any additional information the SFD finds to be relevant, the Regional Administrator will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the Regional Administrator determines the permit qualifies for a different tier, the permit owner will be issued a permit with the revised tier assignment once the initial permit is returned to the SFD for processing.

(iv) If a permit owner chooses to file an appeal of the determination under paragraph (iii) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination. The appeal must be in writing and must

allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340 (e).

(v) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) Ownership requirements and limitations. (i) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(ii) No person, partnership, or corporation may have ownership interest in or hold more than three permits with sablefish endorsements, except for persons, partnerships, or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. Persons, partnerships or corporations that had ownership interest 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, a person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not leases) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional permits, but may not have ownership interest in or hold more than 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(4)(i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A ''change'' in the partnership or corporation means a change in the corporate or partnership membership, except a change caused by the death of a member providing the death did not result in any new members. A change in membership is not considered to have occurred if a member becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

* * * * *

5. In § 660.335, paragraphs (d)(1), (d)(2), and (e)(1) are revised to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

* * * * *

(d) * * *

(1) General. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(4).

(2) Effective date. The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (e) of this section.

* * * * *

(e) * * *

(1) General. A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (g) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel.

* * * * *

6. In § 660.350, paragraph (b)(3) remove the term ''RA'' and add, in its place, the words ''Regional Administrator''.

7. In addition to the amendments set forth above, in 50 CFR part 660 remove the words ''Regional Director'' and add, in their place, the words ''Regional Administrator'' in the following places:

a. Section 660.12,;

b. Section 660.14 (b), (c), (e), and (f)(2);

c. Section 660.15, (e) and (j);

d. Section 660.17 (a), (c), (d), (e)(1), (e)(2), (e)(4) and (k);

e. Section 600.21 (l)introductory text, (l)(1), (l)(2), and (l)(3) and (l)(4);

f. Section 660.23 (a) and (b);

g. Section 660.27 (e), (f)(1), (f)(2) intoductory text, and (f)(2)(i);

h. Section 660.28 (b), (e), (g), (h), (i)(1), and (i)(2)(ii);

i. Section 660.31 (c)(2), (d)(2), and (g)(2);

j. Section 660.43 (b);

k. Section 660.50 (c);

l. Section 660.51 (a), (b), (c)(1),(c)(2), (d), (e), (f), (g)(1), (g)(2), and (j)(2);

m. Section 660.52 (a), (b)(1) and (b)(3);

n. Section 660.53 (c)(2) and (d)(2);

o. Section 660.65 (a) and (d);

p. Section 660.66 introductory text and (a);

q. Section 660.67 (c)(1), (c)(2), (c)(4), (d)(2)(iii), and (d)(2)(iv);

r. Section 660.81 (e);

s. Section 660.84 (c)(2) and (c)(4);

t. Section 660.85 (a);

u. Section 660.302;

v. Section 660.321 (a);

w. Section 660.324 (d);

x. Section 660.339;

y. Section 660.402;

z. Section 660.409 (a)(1) and (b)(1);

aa. Section 660.411 (c).

[FR Doc. 02–27360 Filed 10–24–02; 3:53 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 209
Tuesday, October 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

RIN 0578–AA37

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the policies implementing the farmland protection program. The Farm Security and Rural Investment Act of 2002 repealed the Farmland Protection Program (FPP), established by the Federal Agriculture Improvement and Reform Act of 1996, and authorized a new farmland protection program. The new program will be called the Farm and Ranch Lands Protection Program (FRPP) to both distinguish it from the repealed program and to better describe the types of land the program seeks to protect. Under the FRPP, the Secretary of Agriculture, acting through the Natural Resources Conservation Service (NRCS), is authorized, on behalf of the Commodity Credit Corporation (CCC) and under its authorities, to purchase conservation easements for the purpose of protecting topsoil by limiting nonagricultural uses of the land. As set forth in this proposed rulemaking, NRCS proposes to continue to administer FRPP using the same request for application (RFA) process to announce funding availability that it has used since authorization of the Farmland Protection Program in 1996. NRCS seeks comments from the public on this proposed rule.

DATES: Written comments must be received on or before December 30, 2002.

ADDRESSES: All comments concerning this proposed rule should be submitted to Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. Attention: FRPP Comments. FAX: (202) 720–0745. The Proposed Rule can also be accessed and comments submitted via Internet to *denise.coleman@usda.gov* Attention: FRPP Comments. Users can access the Natural Resources Conservation Service (NRCS) homepage at: *http://www.nrcs.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Coleman, Farmland Protection Program Manager, Natural Resources Conservation Service; phone: (202) 720–9476; fax: (202) 720–0745; e-mail: *denise.coleman@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background Related to the Farm and Ranch Lands Protection Program

Urban sprawl continues to threaten the Nation's farm and ranch land. Social and economic changes over the past three decades have influenced the rate at which land is converted to nonagricultural uses. Population growth, demographic changes, large lot development, expansion of transportation systems, and economic prosperity have contributed to increased agricultural land conversion rates. Increased population, growing affluence, expanded transportation, and cultural factors of ''bigger means better,'' has accelerated the depopulation of the urban centers and has resulted in the conversion of farmland. Between 1960 and 1990, metropolitan-area population grew by 50 percent while the acreage of developed land increased 100 percent. About 45 percent of new construction between the years of 1994 and 1997 occurred in rural areas, with nearly 80 percent being land bordering urban areas. Overall, this translates to over 2.8 million acres being converted per year, with 2 million devoted to housing (USDA, 2000).

According to the USDA National Resources Inventory (NRI), urban and built-up areas increased from 65.3 million acres in 1992 to 79 million acres in 1997, equaling an area approximately the size of Ohio. Perhaps more important than the overall rate of land conversion is the location and type of land subject to this change in land use. On average, prime and important farmlands are being converted at a rate two to four times that of other lands. Based on NRI urban and built-up data for the 1980s, 46 percent of the land converted to urban and built-up uses comes from cropland and pasture, while 38 and 14 percent comes from forest land and range land, respectively. Much of the land being lost is prime, unique, or important farmland located near cities. Moreover, an end to farm and forest land conversion is not in sight. The National Home Builders Association forecasts an expansion of 1.3 to 1.5 million new homes per year through 2010 (USDA, 2000).

As a result of these land use changes, there is growing national interest in the protection of farm and ranch land. Once developed, productive farmland's rich topsoil is effectively lost forever, placing future food security for the Nation at risk. Furthermore, land use devoted to agriculture provides an important contribution to environmental quality, history, and scenic beauty.

Overview of the Farm and Ranch Lands Protection Program

The FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, local governments, and non-governmental organizations with existing farmland protection programs to purchase conservation easements. Funds from FRPP cannot be used to restore historical or archaeological resources nor can funds be used to share in the cost of conservation practices.

Under the FRPP, NRCS proposes to continue to administer the program using the public notice process, as it has since the Farmland Protection Program was authorized in 1996. Through the public notice process, NRCS will solicit applications from federally recognized Indian Tribes, States, units of local government, and non-governmental organizations to cooperate in the acquisition of conservation easements on farms and ranches for the purpose of protecting topsoil from conversion to nonagricultural use. Although NRCS has authority to acquire other interests in land, the RFA will seek to fund the acquisition of conservation easements.

To participate, entities with existing agricultural land protection programs submit to the local NRCS State Office applications requesting FRPP funds to purchase conservation easements that restrict the conversion of farm and ranch land to nonagricultural uses. Entities eligible to participate in the FRPP include:

• Any agency of any State or local government or federally recognized Indian Tribe (including a farmland protection board or land resource council established under State law); or

• Any organization that:

• Is organized principally for one or more of the following conservation purposes: the preservation of land for recreation, open space, historically important land areas and structures, and natural wildlife habitat;

• Is operated exclusively for charitable, religious, or educational purpose, with no part of its net earnings paid to any private shareholder or individual and no substantial part of its activities influencing legislation or intervening in any political campaign for or against a public office candidate; or

• Normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and normally receives not more than one-third of its support in each tax year from the sum of gross investment income.

To be eligible for FRPP, the land proposed for a conservation easement must:

• Contain prime, unique, or other productive soil as defined by the Farmland Protection Policy Act of 1981, as amended (7 U.S.C. 4201 *et seq.*); or

• Contain historical or archaeological resources; and

• Be subject to a pending offer from an eligible entity; and

• Be privately owned.

Aside from demonstrating land and entity eligibility, entities wishing to receive FRPP funds must also demonstrate:

• A commitment to long-term conservation of agricultural lands;

• A capability to acquire, manage, and enforce easements;

• Staff capacity that will be dedicated to monitoring and easement stewardship; and

• The availability of funds to acquire and manage conservation easements.

Selection will be based on national criteria as determined by the NRCS Chief, set forth in the RFA, and additional State criteria as determined by the appropriate State Conservationist. Examples of national criteria may include:

• Acreage of prime, unique, and important farm and ranch land to be protected;

• Total acres of land to be protected with the requested award;

• Acreage of prime, unique, and important farm and ranch land identified in the National Resources Inventory as converted to nonagricultural uses;

• Total acres needing protection;

• Number or acreage of historic and archaeological resources to be protected on farm or ranch lands;

• Anticipated average FRPP cost per acre;

• Rate of land conversion (*e.g.*, local land-use conversion rates);

• Degree of leveraging guaranteed by eligible entities;

• History of eligible entity's commitment to conservation planning and conservation practice implementation;

• Eligible entity's history of acquiring, managing, holding, and enforcing conservation easements. This could include annual farmland protection expenditures, monetary donations received, accomplishments, and staffing levels;

• A description of the eligible entity's farmland protection strategy and how the FRPP application submitted by the entity corresponds to the entity's strategic plan; and

• Eligible entity's total estimated acres of unfunded conservation easements on prime, unique, and important farm and ranch land.

Examples of State criteria developed by the State Conservationist may include:

• Proximity of the parcel to other protected clusters;

• Proximity of the parcel to other agricultural operations and infrastructure;

• Parcel size;

• Type of land use;

• Maximum FRPP cost expended per acre;

• Environmental, cultural, and social benefits;

• Degree of leveraging by the entity; and

• Other criteria as determined by the State Conservationist.

Criteria used to evaluate applications will be available to the public through the NRCS State Conservationist. Pending offers must be for acquiring an easement in perpetuity except where State law prohibits a permanent easement. Once an entity is selected for funding, NRCS, on the behalf of CCC, enters into a cooperative agreement with the entity, thereby obligating money for the easement acquisition. The selected entity works with the landowner; processes the easement acquisition; holds, manages, and enforces the easement. Landowners retain all rights to use the property for agriculture. A Federal contingent right interest in the property must be included in each easement deed for the protection of the Federal investment. In addition, all lands enrolled in FRPP must have a conservation plan developed based on the NRCS Field Office Technical Guide (FOTG) specifications and highly erodible and wetland conservation provisions, in accordance with 7 CFR part 12.

The Federal share for any easement acquisition is limited to a maximum of 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement an eligible entity may include a charitable donation by the landowner of not more than 25 percent of the appraised fair market value of the conservation easement. Where the easement purchase price is less than the appraised fair market value, an entity may choose to provide 50 percent of the purchase price of the conservation easement. If the 50 percent of the purchase price option is chosen, the NRCS share will not exceed the entity's contribution.

Regulatory Certifications

Executive Order 12866

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has been determined that this proposed rule is not a significant rule making action. Therefore, no benefit cost assessment of potential impacts is necessary.

Regulatory Flexibility Act

Pursuant to 5 U.S.C 605(c) of the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this proposed rule. This proposed rule implements the Farm and Ranch Lands Protection Program, which involves the voluntary acquisition of interests in property by NRCS in partnership with State, local, and Tribal governments and nonprofit entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets.

Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist NRCS in determining whether this proposed rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the draft EA, NRCS proposes issuing a finding of no significant impact (FONSI) before a final rule is published. Copies of the draft EA and FONSI may be obtained from Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. The FRPP draft EA and FONSI will also be available at the following Internet address: *http://www.nrcs.usda.gov/programs/Env_Assess/FPP/FPP.html.*

Written comments on the draft EA and FONSI should be sent to Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 provides that the promulgation of this proposed rule is carried out without regard to Chapter 35 of Title 44, United States Code (commonly known as the Paperwork Reduction Act).

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988. NRCS has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule would preempt the State or local laws or regulations found to be in conflict. The provisions of this proposed rule are not retroactive. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Executive Order 13132, Federalism

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, NRCS has assessed the effects of this rulemaking action of State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100,000,000 or more by any State, local, or Tribal government, or anyone in the private sector; therefore, a statement under section 202 of the Act is not required.

List of Subjects in 7 CFR Part 1491

Administrative practice and procedure, Agriculture, Soil conservation.

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to amend Chapter XIV by adding a new part 1491 as set forth below:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

Subpart C—General Administration

Authority: 16 U.S.C. 383lh, 383li.

Subpart A—General Provisions

§ 1491.1 Applicability.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of the Farm and Ranch Lands Protection Program as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements and easements signed on or after the effective date of the final regulation will be administered according to 7 CFR part 1491.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1491.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS shall:

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land shall not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine land and entity eligibility;

(5) Make funding decisions and determine allocations of program funds;

(6) Coordinate with the Office of the General Counsel (OGC) to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(7) Sign and monitor cooperative agreements for the CCC with the selected entity;

(8) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(9) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS may enter into cooperative agreements with eligible entities to assist NRCS with implementation of this Part.

§ 1491.3 Definitions.

The following definitions may be applicable to this part:

Agricultural uses are defined by State law. (If the agency finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils, NRCS reserves the right to impose greater deed restrictions on property than allowable under a State definition of agriculture in order to protect topsoil.)

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and

prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers the FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan means the document that—

- Applies to highly erodible cropland;
- Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;
- Is approved by the local soil conservation district in consultation with the local committees established under Section 8 (b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Contingent right is an interest in land held by the United States, which the United States may exercise under specific circumstances in order to enforce the terms of the conservation easement or hold title to the easement.

Eligible entities means federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations (see definition below), which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land. Additionally, to be eligible for FRPP, the entity must have pending offers (see definition below), for the acquiring conservation easements for the purpose of protecting agricultural land from conversion to nonagricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value of the conservation easement is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historical and archaeological resources must be:

- Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or
- Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with Section 106 of the NHPA), or
- Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

Land Evaluation and Site Assessment System (LESA) is the Federal land evaluation system used to rank land, based on soil potential for agriculture, as well as social and economic factors, such as location, access to market, and adjacent land use. (For additional information see the Farmland Protection Policy Act Rule (7 CFR part 658).

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture.

Non-governmental organization, is defined as any organization that:

- Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue code of 1986;
- Is an organization described in section 501(c)(3) of that code that is exempt from taxation under 501(a) of that code;
- Is described in section 509(a)(2) of that code; or
- Is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code.

Other interests in land include any right in real property recognized by State law, including fee title. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

Other productive soils are soils that are contained on farm or ranch land that is identified as farmland of statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some states and localities, farmlands of statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657, sets forth the process for designating soils as statewide or locally important.

Pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime and unique farmland are defined separately, as follows:

- Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.
- Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples

of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Secretary is the Secretary of the U. S. Department of Agriculture.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

§ 1491.4 Program requirements.

(a) Under the FRPP, the Secretary, on behalf of CCC, shall purchase conservation easements, in partnership with eligible entities, from landowners who voluntarily wish to protect their farm and ranch lands from conversion to nonagricultural uses. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the appraised market value for the easement purchase. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A Federal contingent right interest in the property must be included in each easement deed for the protection of the Federal investment.

(b) The term of all easements will be in perpetuity unless prohibited by State law.

(c) To be eligible to receive FRPP funding, an entity must meet the definition of ''eligible entity'' as listed in the ''Definitions'' section of this proposed rule. In addition, eligible entities wishing to receive FRPP funds must also demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff that will be dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) Eligible land must meet the definition of ''eligible land'' as provided herein. In addition:

(1) Entire farms or ranches may be enrolled in FRPP.

(2) Farms must contain at least 50 percent of prime, unique, statewide, or locally important soil, unless otherwise determined by the State Conservationist, or contain historical or archaeological resources.

(3) Eligible lands are farm and ranch lands that must be subject to a pending offer, as defined in the ''Definitions'' section of this proposed rule, for purchase of a conservation easement.

(4) Eligible land must be privately owned. NRCS will not enroll land in FRPP that is owned in fee title by an agency of the United States or State or local government, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use, unless otherwise determined by the Secretary.

(5) Eligible land must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in Section 1604 of the Farm Security and Rural Investment Act of 2002.

(e) Prior to FRPP fund disbursement, all parcels must have an appraisal. Appraisals shall be completed and signed by a State-certified or licensed appraiser and shall contain a disclosure statement by the appraiser. The appraisal shall conform to either the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions; or, with NRCS National Office approval, be valued using an alternative real estate evaluation system used by the State government in expending State funds. Where an alternative real estate evaluation system is used, parcels will be given equal priority as those having current appraisals.

(f) At the discretion of the Chief, a standard easement will be required as a condition for program participation.

(g) The landowner shall be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12.

§ 1491.5 Application procedures.

(a) When funds are available, NRCS publishes a Request for Applications in the **Federal Register** or, at the discretion of the Chief, uses another process to solicit applications from eligible entities to cooperate in the acquisition of conservation easements on farms and ranches. Information required in the application will be set forth in the Request for Applications.

(b) To participate, an eligible entity submits an application to NRCS for the acquisition of conservation easements on eligible farm or ranch land, on which the entity already has pending offers. An entity's application contains a request to fund one or more parcels. All applications must be submitted to the appropriate NRCS State Conservationist by the specified date, as indicated in the Request for Applications.

§ 1491.6 Ranking considerations and proposal selection.

(a) Once the NRCS State Conservationist has assessed entity eligibility and land eligibility, the State Conservationist shall use National and State criteria to evaluate the land and rank parcels, contained within the entity's application. Entities and parcels will be selected for participation based on the entities' responses to the Request for Applications. Selection will be based on national ranking criteria set forth by the Chief in the Request for Applications and state criteria as determined by the State Conservationist, with advice from the State Technical Committee.

(1) Examples of national criteria may include:

(i) Acreage of prime, unique, and important farm and ranch land to be protected;

(ii) Total acres of land to be protected with the requested award;

(iii) Acreage of prime, unique, and important farm and ranch land identified in the National Resources Inventory as converted to nonagricultural uses;

(iv) Total acres needing protection;

(v) Number or acreage of historic and archaeological resources to be protected on farm or ranch lands;

(vi) Anticipated average FRPP cost per acre;

(vii) Rate of land conversion (*e.g.*, local land use conversion rates);

(viii) Degree of leveraging guaranteed by eligible entities;

(ix) History of eligible entity's commitment to conservation planning and conservation practice implementation;

(x) Eligible entity's history of acquiring, managing, holding, and enforcing conservation easements. This could include annual farmland protection expenditures, monetary donations received, accomplishments, and staffing levels;

(xi) A description of the eligible entity's farmland protection strategy and how the FRPP application submitted by the entity corresponds to the entity's strategic plan; and

(xii) Eligible entity's estimated acres of unfunded conservation easements on prime, unique, and important farm and ranch land.

(2) Examples of State or local criteria determined by the State Conservationist include:

(i) Proximity of parcel to other protected clusters;

(ii) Proximity of parcel to other agricultural operations and infrastructure;

(iii) Parcel size;

(iv) Type of land use;

(v) Maximum FRPP cost expended per acre;

(vi) Degree of leveraging by the entity;

(b) State ranking criteria will be developed on a State-by-State basis. Prior to proposal submission, interested entities should contact the State Conservationist located in their State for a full listing of applicable National and State ranking criteria.

(c) The NRCS State Conservationist may seek advice from the State Technical Committee (established pursuant to 16 U.S.C. 3861) in evaluating the merits of the applications.

§ 1491.7 Funding priorities.

(a) NRCS will only consider funding the acquisition of eligible land in the Program if the agricultural viability of the land can be demonstrated. For example, the land must be of sufficient size and have boundaries that allow for efficient management of the area. The land must also have access to markets for its products and a support infrastructure appropriate for agricultural production.

(b) NRCS may not fund the acquisition of eligible lands if NRCS determines that the protection provided by the FRPP would not be effective because of on-site or off-site conditions.

(c) NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements.

(d) During the application period, pending offers having appraisals completed and signed by State-certified appraisers within the preceding one year shall receive higher funding priority by the NRCS State Conservationist. Before funding is released for easement acquisition, the cooperating entity must provide NRCS with a copy of the certified appraisal.

(e) NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure(s).

(f) NRCS may place a higher priority on lands and locations that link to other Federal, Tribal, or State governments or non-governmental organization efforts with complementary farmland protection objectives (*e.g.,* open space, watershed and wildlife habitat protection).

(g) NRCS may place a higher priority on lands that provide multifunctional benefits including social, economic, and environmental benefits.

(h) A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

(i) NRCS may place a higher priority on the national ranking criteria listed herein than State criteria, if the NRCS Chief deems appropriate.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of CCC, enters into a cooperative agreement with those entities selected for funding awards. Once a proposal is selected by the State Conservationist, the entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement incorporating all necessary FRPP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role of NRCS;

(4) The responsibilities of the easement manager on lands acquired with the assistance of FRPP; and

(5) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(b) The cooperative agreement will also include an attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information. An example of a cooperative agreement may be obtained from the State Conservationist.

§ 1491.21 Funding.

(a) The State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement.

(b) Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Entities are required to supplement the NRCS share of the cost of the conservation easement.

(c) Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer.

(d) The entity must provide, in cash, at least 25 percent of the appraised fair market value of the conservation easement. When providing its share of the cost of the conservation easement, an entity may:

(1) Provide in cash, at least 25 percent of the appraised fair market value of the conservation easement, when accompanied by a landowner donation; or

(2) Provide at least 50 percent of the purchase price, in cash, of the conservation easement. In this situation, the NRCS share cannot exceed the entity's contribution.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements based on lesser cost to FRPP.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement.

(c) The conveyance document or conservation easement deed used by the eligible entity may be reviewed and approved by the NRCS National Office and Office of the General Counsel (OGC) before being recorded.

(d) Since title to the easement is held by an entity other than the United States, the conveyance document must contain a ''contingent right'' clause that provides that all rights conveyed by the landowner under the document will become vested in the United States should the eligible entity (*i.e.*, the grantee[s]) abandon or attempt to terminate the conservation easement. In addition, the contingent right also provides, in part, that the Secretary takes title to the easement, if the eligible entity fails to uphold the easement or attempts to transfer the easement

without first securing the consent of the Secretary.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide and approved by the local conservation district. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

§ 1491.23 Easement modifications.

(a) After an easement has been recorded, no amendments to the easement will be made without prior approval by NRCS.

(b) Easement modifications will be approved only when easement is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation, and when the amendment is consistent with the purposes of the conservation easement.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the entity shall notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the cooperating entity fails to enforce any of the terms of the easement as determined in the sole discretion of the Secretary, the Secretary and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the cooperating entity attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of the easement or extinguish the easement or without the prior consent of the Secretary and payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in the conservation easement shall become vested in the United States of America.

(c) Notwithstanding paragraph (a) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations, as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with the easement requirements.

(d) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(e) The conservation easement shall include an indemnification clause requiring landowners to indemnify, defend, and hold harmless the United States from any liability resulting from the negligent acts of the landowner.

(f) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation easement based on the appraised fair market value at the time the easement is violated or terminated. CCC's share shall be in proportion to its percentage of original investment.

§ 1491.31 Appeals.

(a) A person or cooperating entity participating in FRPP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final agency action except a decision of the U. S. Department of Agriculture under these provisions.

(c) Any appraisals, market analyses, or supporting documentation that may be used by the NRCS to determine property value are considered confidential information, and shall be disclosed only as determined by the cooperating entity and NRCS in accordance with applicable law.

§ 1491.32 Scheme or device.

(a) If it is determined by the Secretary that a landowner or cooperating entity have employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner or cooperating entity during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

Signed in Washington, DC, on October 16, 2002.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 02–26888 Filed 10–28–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

October 22, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conferences.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. The Commission has scheduled a series of public conferences, to be held in the Commission Meeting Room, to address specific areas of concern about the proposed rule. Persons interested in speaking at the conferences should file requests to speak on or before October 25, 2002.

DATES: Requests to speak are due: October 25, 2002. Conferences will be held on: November 6, 2002, November 19, 2002, and December 3, 2002.

ADDRESSES: Send requests to speak to: Office of the Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

1. Take notice that technical conferences led by Commissioners and members of Commission staff will be held on November 6, 2002, November 19, 2002, and December 3, 2002. Each conference will take place from approximately 9:30 a.m. until 5 p.m. in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *customer@ferc.gov.*

2. These technical conferences are intended to be working sessions that focus on clarifying areas of concern with the proposed rule, resolving differences, and devising solutions to the difficult issues that have been identified during the Commission's outreach efforts following issuance of the Notice of Proposed Rulemaking (NOPR) in this docket. To make the conferences successful, we encourage participants to come prepared to support alternative proposals and offer concrete solutions to the issues that have been raised.

3. As specified in the Notice issued in this docket on October 2, 2002, the November 6, 2002, conference will focus on pricing proposals for network upgrades and expansions. The Commission wants to ensure that infrastructure will be built in a timely manner and that costs will be recovered in a fair and efficient manner. In particular, the discussions will attempt to clarify and seek consensus on:

a. Definitions of pricing policies including types of participant funding.

(1) ''Beneficiaries pay''—the beneficiary, whether a single customer, a rate zone, the entire RTO, or a neighboring region as determined by the Independent Transmission Provider, pays for the upgrades.

(2) ''Market-based participant funding''—projects voluntarily proposed by individual market participants are voluntarily paid for by those participants, in order to use the expanded capacity and receive the Congestion Revenue Rights created.

(3) ''Rolled in pricing''—projects are paid by all users of the regional grid.

(4) ''Local License plate pricing''—Projects in a given service territory are paid for by those who pay the access charge in that territory.

b. Definitions of categories of investments that must be addressed:

(1) Region-wide reliability;

(2) Local reliability;

(3) Congestion relief.

c. Which of the types of investments in (b) should be treated under each of the pricing policies in (a)?

d. What barriers might remain under the proposed planning process to getting needed transmission built, and how can they be addressed better?

e. How much regional variation should be allowed in determining the appropriate pricing treatment for each category of investment?

f. Under market-based participant funding, should a market participant who funds an upgrade and receives the associated congestion revenue rights also pay an access charge to receive transmission service?

g. In a region that moves to rely substantially on market-based participant funding, how should customers transition from transmission credits for network upgrades associated with generator interconnections to congestion revenue rights?

h. In regions that propose to rely substantially on market-based participant funding, how can current wholesale network customers ensure that their load growth continues to be planned-for on a non-discriminatory basis?

i. What accommodations should be made, if any, to account for the recovery of the costs of transmission expansion with state retail rate freezes.

4. The November 19, 2002 conference will focus on aspects of the resource adequacy requirement proposed in the NOPR, specifically:

a. How to accommodate differences in state requirements for reserve margins, resource adequacy, and retail access to achieve a standard or seamless resource adequacy within each region;

b. Appropriate elements of design for resource adequacy requirements in areas that have retail access;

c. Methods of ensuring adequate resource deliverability;

d. Potential roles for central procurement;

e. Appropriate penalties for LSEs that do not meet the requirements;

f. Balance of energy and capacity prices to provide appropriate long run investment incentives;

g. Potential roles of forward capacity markets;

h. How to assign the appropriate value (both price and quantity) to demand-side resources' participation in satisfying resource adequacy requirements;

i. How to ensure resource adequacy in energy-limited systems; and

j. Possible seams issues.

5. The December 3, 2002, conference will discuss specific issues related to the transition to congestion revenue rights (CRRs), such as:

a. Whether the Commission's proposal to have a mandatory auction for CRRs should be replaced by a policy allowing regions to choose an allocation procedure.

b. Determining how to allocate CRRs such that all customers receive CRRs commensurate with their existing rights to the transmission system, including load diversity and to what extent planned and documented future load growth is accounted for;

c. Determining how to make sure that competing load-serving entities can acquire CRRs associated with new load or load formerly served by another load-serving entity;

d. Developing long-term CRRs to match the term of power purchase contracts;

e. Where CRRs are auctioned, how to ensure that any auction revenues are properly returned to load;

f. Guarding against the use of CRRs to exercise market power; and

g. Allowing regional variation on how rights are allocated to load.

6. Persons interested in speaking at these conferences should file a request to speak on or before October 25, 2002, in Docket No. RM01-12–000. If possible, interested speakers should also send a copy of their request to speak to *customer@ferc.gov.* The request should clearly specify the topic and date of the conference to which the request pertains; the name of the speaker; his or her title; the person or entity the speaker represents; the speaker's mailing address, telephone number, facsimile number and e-mail address; and a brief description of the issues the speaker wishes to address. As the number of potential speakers may exceed the time allotted for the conference, interested speakers are encouraged to coordinate their efforts with others who may have similar interests. Based on the requests to participate, panels of speakers will be specified in a subsequent notice.

7. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C–Band Satellite. Persons interested in

receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

8. For more information about the conferences, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27439 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AL32

Schedule for Rating Disabilities; Evaluation of Multiple Scars

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Skin in order to clarify how to evaluate multiple superficial or deep scars in a uniform and consistent manner.

DATES: Comments must be received by VA on or before December 30, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL32.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (38 CFR part 4) by revising § 4.118, that portion of the Schedule that addresses scars. It would clarify the method of evaluating multiple superficial and deep scars and provide directions that promote consistent evaluations.

A current note under diagnostic codes 7801 (scars, other than head, face, or neck, that are deep or that cause limited motion) and 7802 (scars, other than head, face, or neck, that are superficial and that do not cause limited motion) in § 4.118 of VA's Schedule for Rating Disabilities (38 CFR part 4) directs that scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, be separately rated and combined in accordance with 38 CFR 4.25 (Combined ratings table).

The current rating schedule provides an evaluation level of 10 percent under diagnostic code 7803 for superficial unstable scars and under diagnostic code 7804 for superficial painful scars. However, it provides no guidance on whether or not each painful or unstable scar, no matter how small or close together, should be separately evaluated. Examples where this might be an issue are multiple scars stemming from a grenade explosion or from certain surgical procedures, such as numerous ligations of varicose veins on a single leg. This lack of guidance has led to inconsistent evaluations because raters are unsure whether each unstable or painful scar calls for a separate evaluation. Therefore, we propose to revise the rating schedule to clarify how multiple superficial unstable or painful scars are to be evaluated.

The provision concerning the evaluation of multiple scars under diagnostic codes 7801 and 7802 has been in effect for many years. Diagnostic codes 7803 and 7804 both address superficial scars, which are, by virtue of the lesser extent of tissue damage, inherently less seriously disabling than deep scars, which are evaluated under diagnostic code 7801. It would, therefore, be neither appropriate nor internally consistent to assign a separate evaluation for each painful or unstable superficial scar, while assigning only a single evaluation for multiple deep scars, unless they are in widely separated areas. Disproportionately high evaluations for superficial scars would result if that were done. Therefore, we propose to evaluate multiple superficial scars under diagnostic codes 7803 and 7804 in the same manner that multiple deep and superficial scars are evaluated under diagnostic codes 7801 and 7802. The issues related to evaluation are similar, and evaluating multiple scars of all four types in the same manner would promote fair and consistent handling of multiple scars, result in equitable evaluations, and remove any ambiguity about their evaluation. We propose to provide three notes at the beginning of § 4.118 providing directions for evaluating multiple scars evaluated under diagnostic codes 7801, 7802, 7803, and 7804.

The first note would explain that scars located in two or more of the following locations are considered to be in widely separated areas of the body: the anterior surface of the left upper extremity, the anterior surface of the right upper extremity, the posterior surface of the left upper extremity, the posterior surface of the right upper extremity, the anterior surface of the left lower extremity, the anterior surface of the right lower extremity, the posterior surface of the left lower extremity, the posterior surface of the right lower extremity, the anterior surface of the trunk, the posterior surface of the trunk, and the head, face, and neck. This represents a rewording of part of the current note under diagnostic codes 7801 and 7802.

The second note would direct raters to assign a single evaluation for all superficial scars in each widely separated area of the body. This is also a rewording of part of the current note under diagnostic codes 7801 and 7802, and would apply to diagnostic codes 7802, 7803, and 7804, the three codes under which superficial scars are evaluated. Since there is the possibility that one or more multiple superficial scars might have characteristics that would allow evaluation under more than one of the diagnostic codes from 7802 to 7804, the note also directs raters to increase the evaluation for scar(s) in each widely separated area of the body by 10 percent if any of the scars in a given area meet the criteria for evaluation under at least two diagnostic codes (among 7802, 7803, or 7804).

The third note would apply to deep scars and directs raters to assign a single evaluation for all deep scars in each widely separated area of the body. This is not a substantive change from the current direction.

We propose an additional change under diagnostic code 7801 in order to eliminate possible confusion about scars that fall between the sizes indicated at various percentage levels. Ten percent would be assigned for area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.), 20 percent for area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.), 30 percent for area or areas of at least 72 square inches (465 sq. cm.) but less than

144 square inches (929 sq. cm.), and 40 percent for area or areas of 144 square inches (929 sq. cm.) or greater.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.)

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: October 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Section 4.118 is amended by:

A. Adding three Notes immediately before diagnostic code 7800.

B. Revising diagnostic codes 7801 and 7802.

The addition and revision read as follows:

§ 4.118 Schedule of ratings—skin.

Notes to the Schedule of Ratings for Skin:

(1) For purposes of evaluating scars, scars located in two or more of the following locations are considered to be in widely separated areas of the body:

(a) The anterior surface of the left upper extremity.

(b) The anterior surface of the right upper extremity.

(c) The posterior surface of the left upper extremity.

(d) The posterior surface of the right upper extremity.

(e) The anterior surface of the left lower extremity.

(f) The anterior surface of the right lower extremity.

(g) The posterior surface of the left lower extremity.

(h) The posterior surface of the right lower extremity.

(i) The anterior surface of the trunk.

(j) The posterior surface of the trunk.

(k) The head, face, and neck.

(2) Assign a single evaluation for all superficial scars in each widely separated area of the body. Increase the evaluation for scar(s) in each widely separated area of the body by 10 percent if any of the scars in a given area meet the criteria for evaluation under at least two diagnostic codes (among 7802, 7803, or 7804).

(3) Assign a single evaluation for all deep scars in each widely separated area of the body.

* * * * *

7801 Scars, other than head, face, or neck, that are deep or that cause limited motion:

Area or areas of 144 square inches (929 sq. cm.) or greater—40

Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.)—30

Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.)—20

Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.)—10

Note: A deep scar is one associated with underlying soft tissue damage.

7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion:

Area or areas of 144 square inches (929 sq. cm.) or greater—10

Note: A superficial scar is one not associated with underlying soft tissue damage.

* * * * *

[FR Doc. 02–27408 Filed 10–28–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7400–3]

RIN 2060–AJ27

Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: With this action, EPA is proposing to add chlorobromomethane (CBM) to the list of controlled substances subject to production and consumption controls in accordance with both the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and EPA's regulations under the Clean Air Act Amendments of 1990 (CAAA). Today's action proposes to create a new Group (Group VIII) of class I substances for CBM, and to designate the value of CBM's ''ozone depleting potential'' (ODP) as 0.12. In accordance with the Protocol, today's action proposes phasing out CBM production and consumption upon publication of the final rule with permitted exemptions. Today's action also proposes to restrict trade in CBM with countries who are not Parties to the Beijing Amendments to the Protocol.

DATES: Comments must be received in writing by November 29, 2002, unless a public hearing is requested. If a public hearing takes place, it will be scheduled for November 13, 2002, after which comments must be received on or before December 13, 2002. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on November 5, 2002. After that time, interested parties may call EPA's Stratospheric Ozone Protection Information Hotline at 1–800–296–1996 to inquire with regard to whether a hearing will be held, as well as the time and place of such a hearing.

ADDRESSES: Public comments and data specific to this action should be submitted in duplicate (two copies) to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XII, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460. If you plan to submit comments, please also notify Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania

Avenue, NW., Washington, DC 20460, (202) 564–3514.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A–92–13, Section XII. The docket is located in room M–1500, Waterside Mall (Ground Floor), at the above address. The materials may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548. The docket may charge a reasonable fee for copying docket materials.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996, or Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–3514; *akhtar.jabeen@epa.gov.* Overnight or courier deliveries should be sent to the office location at 4th floor, 501 3rd Street, NW., Washington, DC, 20001. You may also visit the Ozone Depletion web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Ozone Protection regulations, the science of ozone depletion, and other topics.

SUPPLEMENTARY INFORMATION: This document concerns proposed amendments to the production and import controls for ozone-depleting substances (ODS). The proposed amendment concerns the addition of a new controlled substance, chlorobromomethane (CBM), to the list of substances already subject to controls related to production, import, export, destruction, transhipment, essential uses, and feedstock uses.

The regulated categories that may be affected by this proposed action include:

Category	SIC	NAICS	Examples of potentially regulated entities
1. Industrial organic chemicals, NEC	2869	325199	Producers, importers, or exporters of CBM.
2. Pharmaceutical preparations	2834	325412	Transformers of CBM.
3. Pesticides and agricultural chemicals, NEC	2879	32532	Transformers of CBM.
4. Chemicals and allied products, NEC	5169	42269	Lab suppliers of CBM.
5. Testing laboratories, except veterinary testing labs	8734	54138	Lab users of CBM.
6. Medical and diagnostic laboratories	8071	6215	Lab users of CBM.
7. Research and development in the physical, engineering and life sciences	8731, 8733	54171	Lab users of CBM.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., could be regulated by this proposed action, you should carefully examine the applicability criteria in § 82.1(b) of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. What Is the Scientific and Legal Background for Regulations To Phase Out Ozone-Depleting Substances?

International and national regulatory activities to phase out ozone-depleting substances (ODSs) arose from scientific findings linking ODSs with stratospheric ozone depletion. The stratospheric ozone layer protects the Earth from penetration of harmful ultraviolet (UV–B) radiation. Scientific evidence links the release of certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide, to the depletion of the stratospheric ozone layer. Ozone depletion harms human health and the environment through increased incidence of cataracts, certain skin cancers, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

In response to the body of evidence linking chlorofluorocarbons and other chlorinated and brominated compounds to ozone depletion, the international community reached agreement in 1987 on a landmark treaty. This treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer (''Montreal Protocol'' or ''Protocol'') was originally signed by 46 nations, including the United States. The Protocol establishes

controls on the production and consumption of ozone depleting chemicals. The Protocol has been amended and adjusted numerous times in the 15 years since its original signing, and 183 nations have now ratified the original Protocol (as of 1/24/02).

The Clean Air Act Amendments of 1990 direct the Environmental Protection Agency (EPA) to issue regulations to implement the provisions of the Protocol within the United States. Accordingly, EPA developed a scheme of production and consumption controls relative to substances addressed by the Protocol. The current regulatory requirements of the Stratospheric Ozone Protection Program implement the provisions of the Protocol and the Clean Air Act (CAA) by limiting the production and consumption of ozone-depleting substances. These regulatory requirements are codified at Subpart A to Part 82 of Volume 40 of the Code of Federal Regulations (40 CFR Part 82, Subpart A). As the control measures of the Protocol have been amended or adjusted, and in consideration of other factors, Subpart A has also been amended. For example, following the amendments to the Protocol made at the Fourth Meeting of the Parties in Copenhagen in 1992, a number of changes to the control provisions of the Protocol were made, including an accelerated phaseout of ODS production and consumption. EPA published a final regulation in December of 1993, implementing the United States' obligation under the Copenhagen amendments (58 FR 65018). Other regulations amending Subpart A include those published on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (64 FR 53290).

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: consumption = production + imports—exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Furthermore, the objective that consumption shall not exceed zero, except for exempted uses (as is the ultimate objective under the Montreal Protocol and CAA for all ozone-depleting substances) is achieved through a ban on production and on import. Quantities of exports are not controlled as such (although trade in controlled substances with non-Parties to the Protocol is controlled for reasons explained in section IV.C.3. of this Preamble). Yet by setting production and import in the above equation equal to zero, any positive quantity of export in the above equation will result in a value for consumption which is less than zero. Under the regulatory program established by EPA to implement the Montreal Protocol, limited exceptions to the ban on the import of phased-out class I controlled substances exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and 40 CFR Part 82, Subpart A, (3) imported for destruction or transformation only, or (4) a transhipment (*i.e.*, from one foreign country through the U.S., to another foreign country) or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4(d), 82.13(g)(2)).

II. What Chemicals Are Addressed by Today's Proposed Action and How Are They Used?

Today's proposed action will affect only one chemical, chlorobromomethane (CBM).[1] CBM is a chemical compound found in trace quantities in the atmosphere with both natural and man-made sources. Research indicates that CBM has an atmospheric lifetime of ~0.21–0.25 yr^{-1}. The Parties to the Montreal Protocol designated the ODP of CBM as 0.12. This value is consistent with an examination of scientific investigations on this topic, which concluded that an appropriate range for the ODP of CBM is 0.07–0.15 (See 64 FR 22985, 4/18/99).

Preliminary research indicates that the past and current major industrial applications of CBM have been in 4 main areas: in the fire protection sector, as an explosion suppression agent, as a solvent, and as a feedstock in the manufacture of other chemicals. Informal discussions with CBM producers indicate that the majority of CBM is produced for feedstock use. EPA seeks comment as to whether any other uses of CBM exist that have not been captured in the following subsections.

A. CBM as a Fire Extinguishing Agent

Halogenated agent fire extinguishers were initially developed in the early 1900s and filled an important fire protection niche. Halogenated agent extinguishers were efficient on fires in materials where water or largely water solutions were ineffective, such as on fires involving electrical arcs and on fires involving volatile liquids.

Increasing concerns about short and long-term adverse health effects of CBM on the lungs, kidneys, skin, and liver led to the end of this agent's acceptability as a fire extinguishing agent for use in areas occupied by humans. In the 1960s, Underwriters' Laboratories, Inc. withdrew recognition of fire extinguishing agents with a toxicity classification exceeding a certain threshold. This action affected CBM, carbon tetrachloride and methyl bromide as fire extinguishing agents. In the early 1980s, the Occupational Safety and Health Administration (OSHA) banned the use of both carbon tetrachloride and CBM as fire extinguishing agents in areas where employees can be exposed to the agent or its side effects. OSHA does, however, permit the use of CBM as an explosion suppression agent in unoccupied spaces (29 CFR Part 1910, Subpart L, Appendix A (Section 160)).

Preliminary research by EPA also indicates that CBM was used in some military applications (*e.g.*, in aircraft fire protection). However, Department of Defense (DoD) officials indicate that no current requirements exist or are expected to exist for CBM, and that today's proposed action will not adversely affect DoD.

B. CBM as an Explosion Protection Agent

CBM is an effective explosion protection agent. Explosions affect many industries such as plastics, forest products, powdered foods, waste disposal, grain, coal, chemical, petrochemical, food processing, brewing, and pharmaceutical. Explosions are broadly classified as deflagrations or detonations, depending upon the speed at which the combustion zone propagates. Five primary methods exist for controlling deflagrations: prevention, containment, venting, suppression, and isolation. CBM and other halon agents were used in explosion suppression systems. Such systems operate by detecting an explosion in its early stages and introducing a suppressant (*e.g.*, CBM) that prevents the combustion reaction from continuing.

EPA research indicates that one U.S. company historically manufactured explosion protection systems containing CBM. Manufacture and sale of such systems ended in the early 1990s. No significant imports of such systems into this country are known. It is estimated that several hundred such explosion protection systems are currently deployed among various facilities throughout the United States. An EPA regulation, published on April 28, 1999 (64 FR 22982), found CBM to be unacceptable as a substitute for Halon

[1] The terms chlorobromomethane and bromochloromethane are synonymous. They both refer to the chemical, CH_2BrCl. Both terms can be found in industry, scientific, and regulatory documents.

1301 in total flooding applications in the fire suppression and explosion protection sector. EPA published this rule under Section 612 of the CAAA, which authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. The program generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. In the April 1999 action, the SNAP program found that other alternative Halon 1301 replacement agents existed with zero or lower ozone-depleting potential than CBM.

C. CBM as a Solvent

CBM has been considered as a potentially promising cleaning agent, either alone or as a solvent blend. Under EPA's SNAP program, the Agency received an application requesting consideration of CBM as a substitute for CFC–113 and methyl chloroform in solvents cleaning of metals, electronics, and in precision cleaning.

In a regulation published on April 28, 1999 (noted above), EPA determined that CBM was unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning, electronics cleaning and precision cleaning because numerous other alternative substances exist with lower environmental risks (64 FR 22982). That regulation also established that CBM is unacceptable in aerosols (as a solvent) as a substitute for CFC–113, methyl chloroform, and HCFC 141b, and in adhesives, coatings, and inks (as a carrier solvent) as a substitute for CFC–113, methyl chloroform, and HCFC 141b.

D. CBM as a Feedstock

According to preliminary research by EPA, approximately 80% of CBM produced in the past has been used as a feedstock in the manufacture of pharmaceutical products, water treatment chemicals, and a biocide. Today's proposed action would not affect production or import (except for import from non-Party countries; see section IV.C.1.) of CBM when that CBM is subsequently transformed, as it is when it is used as a feedstock. ''Transform'' means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes (See 40 CFR 82.3). The definition of ''production'' of controlled substances in § 82.3 explicitly excludes ''the manufacture of a controlled substance that is subsequently transformed'' and therefore production controls will not apply to such manufacture. Also, § 82.4 (c) and (d) exclude controlled substances ''that are transformed or destroyed'' from the Class I import prohibition.

E. Process Agents

The Parties to the Protocol recognize that certain controlled ozone-depleting substances, because of their unique chemical and/or physical properties, can facilitate an intended chemical reaction and/or inhibit an unintended chemical reaction. The term ''process agent'' is used to refer to controlled substances in such applications. Controlled substances are typically used in chemical processes as process agents for at least two of the following unique chemical and/or physical properties: (1) Chemically inert during a chemical reaction; (2) physical properties (*e.g.*, boiling point, vapor pressure, specific solvency); (3) to act as a chain transfer agent; (4) to control the desired physical properties of a process (*e.g.*, molecular weight, viscosity); (5) to increase plant yield; (6) non-flammable/non-explosive; and (7) to minimize undesirable by-product formation. Source: Process Agents Task Force (PATF), 2001 (available at *http://www.teap.org/html/process_agents_reports.html*).

Formally, the term ''process agents'' under the Montreal Protocol means ''the use of controlled substances for the applications listed in table A'' of Decision X/14 of the Meetings of the Parties to the Montreal Protocol (Handbook for the International Treaties for the Protection of the Ozone Layer. Ozone Secretariat, UNEP, Nairobi, Kenya, p. 85. Available at *http://www.unep.org/ozone/Handbook2000.shtml).* Presently, four controlled substances are listed as process agents: carbon tetrachloride (CTC), CFC–11, CFC–12, and CFC–113. These are used in the manufacture of chlorine, polymers, chlorinated (intermediate) products, pharmaceuticals, and pesticides and other agricultural chemicals.

Controlled substances produced or imported as process agents (as listed in table A of Decision X/14) for use in plants and installations that were in operation before January 1, 1999, are not counted in the calculation of production and consumption of controlled substances from January 1, 2002, and thereafter. That is, production and import of controlled substances as process agents listed in table A of Decision X/14 are not subject to production and import restrictions under the Montreal Protocol. In the case of non-Article 5 Parties such as the U.S., the emissions of controlled substances in these processes must be reduced to insignificant levels as defined in table B of Decision X/14.

Parties may propose additions to the list of controlled substances designated as process agents by sending a detailed proposal to the Ozone Secretariat, which will forward them to the Technology and Economic Assessment Panel (TEAP). The Panel will then investigate the proposed change and make a recommendation to the Parties whether or not the proposed use should be added to the list by decision of the Parties.

EPA received a letter from one stakeholder requesting that their use of CBM as a solvent in the process of producing a polymer additive be considered a process agent use. EPA has approved this company's use of CBM as a process agent use and has submitted a request to the TEAP to add this use of CBM to the list of process agents in Table A of Decision X/14 and to change the emissions limit for the United States in Table B to reflect this addition. EPA seeks comment as to whether any other applications of CBM exist that should be submitted for consideration as a process agent. Commenters should provide detailed information on the quantities of chemicals involved, the chemical process, and the products. EPA also seeks comment as to the anticipated impacts, if any, of this proposed rule on such potential process agent uses.

III. What Are the Elements of the International Agreement To Regulate CBM?

A. Preliminary Discussions on Controlling CBM

Interest in banning production of CBM was first raised in the Montreal Protocol forum in 1998. At the Tenth Meeting of the Parties to the Protocol in November, 1998, the suggestion was made that the Parties immediately ban CBM. CBM was recognized as a ''new'' and unregulated substance with a high ODP. In response to concern that CBM was being aggressively marketed to developing countries as an ''ozone-safe'' alternative solvent, and that unhindered global production of CBM could significantly harm or threaten the ozone layer, the Parties to the Montreal Protocol agreed at the Tenth Meeting to take measures to discourage its production and marketing. The 1999 Report of the Technology and Economic Assessment Panel included a recommendation for regulatory controls of CBM from the Solvents Technical Options Committee (STOC):

In view of the predicted quantities of CBM, if the market for this substance is developed

unhindered and the ODP, which is within the same range as HCFCs regulated under the Montreal Protocol, the STOC recommends that the Parties consider appropriate action to prevent or limit further depletion of the ozone layer due to this substance.'' [2]

It should be noted that there was reason to believe that a significant future market for CBM might exist in the absence of regulation. For example, industry had identified CBM as a potentially promising cleaning agent in the 1990s; and as mentioned above, EPA's SNAP program had received an application requesting consideration of CBM as a substitute for CFC–113 and methyl chloroform in solvents cleaning of metals, electronics, and in precision cleaning. Although EPA's 1999 regulation noted above (64 FR 22982) determined that CBM was unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning, electronics cleaning and precision cleaning, as well as unacceptable as a substitute for Halon 1301 in total flooding applications in the fire suppression and explosion protection sector, these restrictions do not control CBM use outside of the United States.

B. The ''Beijing Amendments'' and Their Provisions Regarding CBM

The Parties to the Protocol at the Eleventh Meeting (''Beijing Amendments'') agreed to list CBM as a controlled substance and establish its phaseout schedule. The specific terms of the Beijing Amendments can be found at *http://www.unep.org/ozone/Beijing-Amendment.shtml* and also in the Docket to this proposed rulemaking. The Parties agreed to add a new group of controlled substances to Annex C. This new group, Group III, consists of a single entry, chlorobromomethane, which was assigned an ODP of 0.12. Furthermore, the Parties agreed to add a new Article (''Article 2I: Bromochloromethane'') to the Protocol which specifies that as of January 1, 2002, the consumption and production of the controlled substance in Group III of Annex C shall not exceed zero, except for production or consumption necessary to satisfy uses that may be agreed by the Parties in the future to be essential.

The Protocol contains no exemptions from production controls for CBM to meet the ''basic domestic needs'' of ''Article 5'' parties as it does for many other groups of ODSs. For other ODSs, the Montreal Protocol allows Parties to exceed their level of baseline production to accommodate the ''basic domestic needs'' of Article 5 countries. Article 5 countries are defined by the Parties as developing countries whose annual calculated level of consumption of controlled substances falls below certain thresholds. The basis for allowances for Article 5 Parties has been described previously (52 FR 47496, 12/14/87). For certain ODSs, the Protocol allows excess production for Article 5 countries and EPA has accordingly provided for such excess production in its regulations (see 40 CFR Part 82, Subpart A, 82.9(a)). In contrast, when the control measures set forth in the Protocol do not provide for such excess production, no ''Article 5'' provision has been granted in EPA regulations. Because Article 2I of the Protocol, which specifies controls on CBM, does not include the provision for granting Article 5 allowances for CBM, such a provision will not be made with today's proposed action (see discussion in Section IV.C.5.a).

In addition to the control measures described above, the Beijing Amendments add to the Protocol a ban on import of CBM from, and export of CBM to, non-Parties to the Beijing Amendments. Under the terms of the Beijing Amendments, each Party is required to implement this trade ban on CBM within 1 year of the date of entry into force of the Amendments. In general, under the Montreal Protocol and its amendments, bans on imports from and exports to non-Parties reflect an agreed strategy by the Parties to the Montreal Protocol to encourage ratification of each successive amendment package to the Protocol and to ensure that controlled ozone-depleting substances are not provided to countries that have not agreed to control measures.

Finally, as with most other groups of ODSs regulated under the Montreal Protocol, the phaseout of CBM production and consumption accommodates the future possibility of ''essential use'' allowances. At the Fourth Meeting of the Parties to the Protocol in Copenhagen (November 23–25, 1992), the Parties established criteria for determining ''essential uses'' that could be exempted from the phaseout of production and importation. These criteria and the nomination process are described in more detail in earlier **Federal Register** notices (64 FR 50084, 9/15/99).

IV. What Are the New U.S. Requirements Proposed by Today's Action?

A. Legal Authority

Several provisions of the CAA provide the legal authority for today's proposed action. Section 602(a) provides EPA with the general authority to list Class I substances. Section 602(a) requires EPA to add to the list of Class I substances those substances that it finds cause or contribute significantly to harmful effects on the stratospheric ozone layer. Section 602(c) requires that the Administrator place newly added Class I substances, to the extent consistent with the Montreal Protocol, either into an existing Group or a new Group. As explained in Section III A of today's proposed action, EPA believes that CBM may cause or contribute significantly to the harmful effects on the stratospheric ozone layer. Whenever EPA adds a substance to the Class I list, EPA is also required by Section 602(e) to assign a numerical value representing the substance's ozone-depleting potential (ODP). Section 602(e) requires this ODP numerical value to be consistent with the Montreal Protocol if such ODP is specified by the Montreal Protocol.

Those substances listed as a Class I (or Class II) substance are then subject to the monitoring and reporting requirements as set forth and implemented under Section 603. Section 603(b) requires that on a quarterly basis, or other such basis as EPA may prescribe, a report be filed with EPA regarding the amount of substance(s) produced, imported, and exported during the preceding reporting period.

Section 604 sets forth the general phase-out schedule of Class I substances and exceptions to the phase-out. Section 604(a) requires EPA to promulgate regulations implementing the phase-out schedule for Class I substances set forth in the CAA. The Section 604 phaseout date for most Class I substances is January 1, 2000; however, under Section 602(d), EPA may establish a later phaseout date for a newly listed substance if the Section 604 phaseout date is unattainable, considering when the substance is listed.

Section 614(b) requires that Title VI of the CAAA be ''construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, * * *, and shall not be construed, interpreted, or applied to abrogate the responsibilities of the United States to implement fully the provisions of the Montreal Protocol.'' Section 614(b) requires that in the case

[2] April 1999 Report of the Technology and Economic Assessment Panel, Part V, 2.7.1.

of any conflict ''between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.'' Thus, today's proposed actions list CBM and put in place the phaseout controls consistent with the Montreal Protocol.

B. Specific Elements of Today's Proposed Action

1. Listing CBM and Controls

Today's proposed action would create a new Group (Group VIII) of class I substances, place CBM in this new Group, and assign CBM an ODP of 0.12. Today's proposed action would establish a full ban on CBM production and import. This ban would not apply to the production or import of CBM that is subsequently transformed or destroyed, or to imports of transhipments or heels (see Section I). No interim phasedown levels are proposed; that is, production and import are unrestricted until the effective date of the ban. It should be noted that EPA is not proposing baseline allowances for CBM and therefore will not at this time collect information on baseline production and consumption of CBM.

Today's action does not propose production for the ''basic domestic needs'' of Article 5 countries for reasons described in Section III B of this Preamble. After the total phaseout of CBM production and import, EPA anticipates that the Parties to the Protocol may authorize inclusion of CBM in the exemption for laboratory and analytical uses, described in greater detail in Section IV.B.2 of this Preamble. EPA is proposing reporting and recordkeeping requirements for persons who produce, import, destroy, transform, tranship, or export CBM, as well as for CBM authorized for essential uses. In addition, EPA is proposing that persons wishing to import used, recycled or reclaimed CBM must comply with the petition process described in 40 CFR 82.4(j) and 82.13(g)(2), (3) and (4).

EPA is proposing that the effective date for all of today's proposed actions would be 30 days from the date of publication of the final rule in the **Federal Register**. Under Section 604(b) of the CAA, unless otherwise stated, the phaseout date for Class I substances is January 1, 2000. However, pursuant to Section 602(d), EPA may establish a later phaseout date for a newly listed substance if the Section 604(b) date is unattainable. Because the January 1, 2000 phaseout date is in the past, it is obviously unattainable. Therefore, EPA is proposing to establish a later phaseout date linked to the publication date of the final rule.

Today's proposed effective date takes into consideration that the Beijing Amendments entered-into-force under the Protocol on February 25, 2002, for Parties that have ratified the amendment package. The U.S. Senate gave their advice and consent to the ratification of the Beijing Amendment package on October 9, 2002, but the U.S. must still officially deposit its instrument of ratification with the United Nations. Ninety days following the date the U.S. officially deposits the instrument of ratification for the Beijing Amendment package, the U.S. assumes obligations to comply with the provisions of the Beijing Amendment. Thus, EPA needs to have put in place (prior to the deposit of the instrument of ratification) final regulatory programs that will implement and ensure U.S. compliance with the provisions of the Beijing Amendment package.

2. Ban on Trade With Non-Parties

Today's action also proposes to prohibit CBM import from and export to a foreign state that is not a Party to the 1999 Beijing Amendments to the Protocol. In accordance with previously established provisions under the Protocol, current EPA regulations (60 FR 24970; 40 CFR 82.4(l)) prohibit certain class I controlled substances from export to or import from foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (*e.g.*, the London Amendments).

With today's action, EPA is proposing adding a new subparagraph, § 82.4(l)(5) regarding a CBM trade ban that would become effective 30 days after the date of publication of the final rule in the **Federal Register**. However, in going forward with today's proposal, EPA wishes to note that it is also considering alternative dates for making the trade ban effective. EPA is also considering an effective date immediately upon publication of the final rule. This other approach is being considered because under the Protocol, the CBM trade ban will go into effect one year from entry-into-force of the Beijing Amendments. Since the Beijing Amendments entered-into-force on February 25, 2002, the effective date of the trade ban for those countries that have ratified the Amendments would be February 25, 2003. An effective date for the trade ban for the U.S. could therefore be on or after this 2003 date.

The U.S. Senate gave their advice and consent to the ratification of the Beijing Amendment package on October 9, 2002, but the U.S. must still officially deposit its instrument of ratification with the United Nations. Ninety days following the date the U.S. officially deposits the instrument of ratification for the Beijing Amendment package, the U.S. assumes obligations to comply with the provisions of the Beijing Amendment. Thus, EPA needs to have put in place (prior to the deposit of the instrument of ratification) final regulatory programs that will implement and ensure U.S. compliance with the provisions of the Beijing Amendment (including the trade ban on CBM).

A revised list of Parties that have ratified the Montreal Protocol and successive amendments to the Protocol is published as Annex 1 in Appendix C to Subpart A with today's proposed action. For the purposes of the trade ban proposed in today's action, companies should refer to Appendix C to Subpart A of Part 82 to identify nations that have not yet ratified the Beijing Amendments, although this list will likely change by the time a final rule is published. CBM imports from or exports to these nations that have not ratified the Beijing Amendments would be prohibited. EPA will publish notices on a periodic basis to update this list (Appendix C) to reflect when Parties ratify the Montreal Protocol and its amendments. For additional information on countries that have ratified the Protocol and its amendments, visit the website of the United Nations Environment Program (UNEP) Ozone Secretariat at www.unep.org/ozone/ and look for the ''Status of Ratification.''

3. Essential Use Exemptions

Article 2I of the Montreal Protocol allows for the possibility of ''essential use'' exemptions from the phaseout established for CBM. The Parties to the Protocol established a process in Decision IV/25 by which they can determine what uses of a controlled substance are considered ''essential uses.'' In contrast, the CAA delineates several specific exemptions under which uses of ODS may be considered to be exempt from the phaseout of ODSs. Thus, a use that is considered an ''essential use'' under the Protocol, taking into account more recent decisions under the Protocol, may or may not be specifically exempt from the phaseout under the CAA. Section 614 of the CAA dictates that the more stringent provision should prevail when there is a conflict with the Protocol. In some instances the CAA may contain the more stringent provision.

In 2001, EPA provided a *de minimis* exemption for essential laboratory uses of class I ODSs based on the criteria

listed in Appendix G of subpart A of 40 CFR part 82. Production and import of class I controlled substances for certain narrowly defined laboratory and analytical applications are exempt from the production and import phaseout (*See* 66 FR 14760 (3/13/01)). The criteria identifying exempt applications are specified in Appendix G to 40 CFR Part 82, Subpart A. Furthermore, the production and import of class I controlled substances for laboratory and analytical applications must be conducted in accordance with the recordkeeping and reporting requirements specified in 40 CFR 82.13(v) to (z) of Subpart A, which are summarized later in this Preamble.

On February 11, 2002, EPA extended this exemption through the year 2005, while eliminating the following uses, consistent with Decision XI/15: (1) Testing of oil, grease and total petroleum hydrocarbons in water; (b) Testing of tar in road-paving materials; and (c) Forensic finger-printing (67 FR 6352). However, it should be noted that the Parties to the Montreal Protocol have not extended the global laboratory and analytical essential-use exemption indefinitely. This issue is further discussed at 66 FR 14767 (3/13/01).

4. Recordkeeping and Reporting Requirements

If EPA designates CBM as a class I ODS, existing recordkeeping and reporting requirements in 40 CFR 82.13 will apply to production, importation, destruction, transformation, transhipments, export, or essential uses of CBM. Potentially affected parties are urged to consult the relevant regulatory paragraphs in 40 CFR Part 82.13, Subpart A. In addition, guidance and reporting forms for these requirements are available from EPA's Stratospheric Ozone Hotline ((800) 296–1996). Today's proposal to extend the existing recordkeeping and reporting requirements to CBM will not take effect until EPA's information collection request (ICR) has been finalized. This process is described in Section VII.E.

(a) Producers

EPA is proposing that entities that produce CBM, as for other class I controlled substances, would submit a report to the EPA Administrator within 120 days of publication of the final rule, describing in detail how daily production quantities are measured and recorded, including how fugitive losses are accounted for and the estimated percent efficiency of production process. These entities would also maintain detailed records pertaining to (i) The quantity of controlled substances produced at each facility and the purposes for which they are produced, used, and sold, with certain written verifications; (ii) quantities of other chemicals produced within each facility and quantities of inputs used in the production of controlled substances; and (iii) shipments of controlled substances produced at each facility. These entities would, in addition, submit a quarterly report identifying quarterly production amounts and amounts sold, transferred, or exported (and specifying amounts transformed or destroyed by the producer or recipient), with appropriate verifications; and a list of the essential-use (including laboratory essential use) allowance holders from whom orders were placed and the quantity of essential-use controlled substances requested and produced, with appropriate verifications. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(b) Importers

According to EPA's existing requirements for ODSs, a person may import a used class I controlled substance if they comply with the petition process described in 40 CFR 82.4(j) and 82.13(g)(2),(3) and (4). Under the Protocol and the CAA, the import of ''used controlled substances'' does not count against a country's obligation to completely phase out import. Therefore, EPA is proposing that with the listing of CBM as a class I controlled substance, an importer of used, recycled, or reclaimed CBM would become subject to the requirements specified in these sections. Specifically, importers of used, recycled, or reclaimed controlled substances and transshipments would need to fulfill the import petition process.

This process requires that for each individual shipment of greater than 150 lbs, at least 15 working days before the shipment leaves the foreign port of export, the importer must submit to EPA a petition including the identity and quantity of the controlled substance; information pertaining to the source, foreign owner, and exporter of the controlled substance, and information regarding the previous use and identity of foreign reclaimer; information on import port of entry, vessel, and dates of shipment; and the intended use of the controlled substance (40 CFR 82.13(g)(2) and (g)(3)).

EPA is also proposing that entities that import CBM, would also be subject to the standard recordkeeping and reporting requirements for importers of class I substances. These include the requirement to maintain detailed records of the quantity of each controlled substance, including information and documentation pertaining to the amounts that may be in mixtures, that are used, recycled or reclaimed, that are for use or sold for use in processing resulting in their transformation or destruction, and that are imported for essential uses; and including documentation and/or certification relating to port of entry, country from which the substance was imported, bill of lading, the U.S. customs entry form, and intended use of the imported substance. Such entities must also submit to EPA a quarterly report summarizing the records described above and including certifications regarding the intended use of controlled substances (*e.g.*, transformation, destruction, essential uses). In the case of imports of used (including recycled or reclaimed) controlled substances, or heels of controlled substances, bills of lading or invoices must be labeled, indicating that the controlled substance is used, recycled, reclaimed, or a heel, as appropriate. See 40 CFR Part 82, Subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

(c) Exporters

EPA is proposing that exporters of CBM, as for other class I controlled substances, would submit information within 45 days after the end of the control period, including the names and addresses of the exporter and the recipient of the exports, the type and quantity of the controlled substances exported, percentage which is used, recycled, or reclaimed, date/port of export, amount exported to Article 5 countries, and documentation or certification relating to purchaser's or importer's intent to transform or destroy the controlled substance. Exporters of class I controlled substances must also label, in the case of exports of used (including recycled or reclaimed) controlled substance, bills of lading or invoices, indicating that the controlled substance is used, recycled, or reclaimed. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(d) Destroyers

EPA is proposing that entities that destroy CBM, as with other class I controlled substances, would submit a one-time report stating the destruction unit's efficiency and the methods used to determine destruction efficiency and to record the volume destroyed. Changes to these methods must be

reported within 60 days of the change. The report must also include names of other regulations applicable to the destruction process. Such entities must also provide the producer or importer from whom they purchased or received the controlled substances with a verification that controlled substances will be used in processes that result in their destruction. Destroyers of class I controlled substances must also report the names and quantities of class I controlled substances destroyed for each control period within 45 days of the end of the control period. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(e) Transformers

EPA is proposing that entities that transform CBM, as for other class I controlled substances, would provide the producer or importer of the controlled substances the IRS certification that the controlled substances are to be used in processes resulting in their transformation, and report the names and quantities of class I controlled substances transformed for each control period within 45 days of the end of the control period. *See* 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(f) Transhipments, Heels, and Essential Uses

EPA is proposing that entities that bring back a container with a heel of CBM to the United States would report quarterly the amount brought into the United States, certifying that the residual amount in each shipment is less than 10% of the volume of the container and will remain in the container and be included in a future shipment, be recovered and transformed or destroyed, or be recovered for a non-emissive use. They would also have to report on the final disposition of each shipment within 45 days of the end of the control period. Entities that transship a controlled substance must maintain records that indicate that the controlled substance shipment originated in a foreign country destined for another foreign country, and does not enter interstate commerce with the United States. Entities that were allocated essential-use allowances and submitted an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(g) Laboratory Essential Uses

EPA is proposing that CBM to be used in laboratory applications be exempted from the ban in the same manner that all other Class I ODSs are exempted for laboratory uses. In addition, laboratory distributors who sell CBM under this exemption would be subject to the reporting requirements outlined in 40 CFR Part 82, Subpart A (§ 82.13). These reporting requirements are as follows: Laboratory distributors/suppliers must report quarterly the quantity received of each class I controlled substance from each producer or importer. Distributors must also keep on record certifications from customers who purchase CBM (or any Class I ODS) stating that the CBM will only be used in laboratory applications defined in 40 CFR Part 82, Subpart A (§ 82.13), Appendix G. (Laboratory customers purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing). Distributors must report quarterly the quantity of the controlled substance purchased by each laboratory customer. If the controlled substances are only sold as reference standards for calibrating laboratory analytical equipment, the distributor may write a letter to the EPA Administrator requesting permission to submit these reports annually rather than quarterly. See 40 CFR Part 82, Subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

V. What Other Stratospheric Protection Regulations Will Relate to CBM Following Today's Proposed Action?

A regulation originally published on February 11, 1993 (58 FR 8136) and amended at 60 FR 4020 (January 19, 1995) establishes requirements pertaining to labeling of products containing or made with ozone-depleting substances. The text of that regulation (as well as Fact Sheets about it) can be found at the following Web site: *http://www.epa.gov/ozone/title6/labeling/labeling.html.* The labeling requirements apply to products manufactured with, containers of, and products containing specific ozone-depleting substances pursuant to section 611of the CAAA. Specifically, the regulations require products that are manufactured with a process using a class I substance; products containing a class I substance; and containers of a class I or class II (hydrochlorofluorocarbons (HCFCs)) substance or mixture to bear a ''clearly legible and conspicuous'' warning statement. Manufacturers, distributors, wholesalers, and retailers of products manufactured with, containers of, and products containing CBM would therefore be required to comply with the labeling requirements which would become applicable to CBM one year after its final listing as a class I ODS; See 40 CFR Part 82, Subpart E.

VI. What Are the Supporting Analyses?

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed ban on production and import is expected to have minimal economic impact because production and import for feedstock uses (which represent the majority of current production and import uses) are exempt from the ban. Furthermore, CBM use has been largely curtailed by prior environmental and safety regulations in the fire protection, explosion suppression, and solvent sectors. Therefore the proposed ban of CBM is not expected to significantly affect the regulated community.

Based upon research and information available to EPA at this time, EPA understands that the regulated community directly impacted by today's proposed action is restricted in size. Potentially regulated entities include entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all of these entities, there would be new recordkeeping and reporting requirements imposed by today's proposed action, but these are estimated to be minimal (approximately a total for the industry of $200,000 per year; see VII.B. for explanation of this estimate).

Thus, today's proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that are expected to significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this proposed rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the Standard Industrial Classification (SIC) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

Category	SIC Code	NAICS Code	SIC small business size standard (in number of employees or millions of dollars)
1. Industrial organic chemicals, NEC	2869	325199	1,000
2. Pharmaceutical preparations	2834	325412	750
3. Pesticides and agricultural chemicals, NEC	2879	32532	500
4. Chemicals and allied products, NEC	5169	42269	100
5. Testing laboratories, except veterinary testing labs	8734	54138	$5.0
6. Medical and diagnostic laboratories	8071	6215	$5.0
7. Research and development in the physical, engineering and life sciences	8731, 8733	54171	$5.0

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

Briefly, the following entities may potentially be affected by this regulation: entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all these entities, there are new recordkeeping and reporting requirements imposed by today's proposed action. See the section entitled ''Paperwork Reduction Act.'' It is estimated that total recordkeeping and reporting requirements will cost approximately an industry-wide total of $200,000 for the universe of potentially regulated entities, consisting of approximately 130 companies.

In addition to recordkeeping and reporting requirements, today's proposed action bans the production and import of CBM. There are only 2 known producers of CBM in the United States. These are large, multinational corporations and not small entities. In addition, informal discussions with these producers indicate that virtually all of their CBM production is for customers who transform CBM; this production is not subject to the CBM phaseout implemented by today's proposed action. Regarding import, EPA records indicate that during the years 1995–1999 (the years for which data were available), 22 companies had imported CBM during one or more years. Of these, 16 had imported CBM in only one of the 5 years of record. Informal discussions with the primary importer (responsible for 77% of the imported CBM) indicate that 80-85% of their imports are for transformation. Thus, the impacts of today's proposed action on CBM importers will also be limited (providing that import is from countries that are Parties to or in compliance with the Beijing Amendments). EPA sent letters on February 28, 2001, and again on April 25, 2001, to all importers for which

addresses could be found, as well as others, notifying them of EPA's anticipated implementation of the 1999 Beijing Amendments to the Montreal Protocol, including the ban on production and import, and new recordkeeping and reporting requirements. To date, no adverse concern has been expressed by any small business recipient of the letter.

Today's proposed action also bans trade in CBM with countries which are not Parties to or in compliance with the Beijing Amendments to the Montreal Protocol. EPA believes that this provision of today's proposed rule will not significantly impact the regulated community because extremely limited demand is believed to exist for non-feedstock purposes, as explained in earlier sections of this Preamble, and because it is expected that demand for CBM for feedstock purposes could potentially be met by domestic production.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA notes that it has conducted outreach to consult with and notify the potentially affected community of today's proposed action.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this proposed regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

D. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements an obligation of the United States to implement fully the provisions of the Montreal Protocol and is not directly based on health or safety risks.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1432.22) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan @epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not enforceable until OMB has approved them.

As explained in EPA's ICR document, EPA's Office of Air and Radiation is revising the previously approved information collection by the same title.[3] Today's proposed action will impose new recordkeeping and reporting requirements associated with the production, import, export, recycling, destruction, transhipment, and feedstock use of CBM. Specifically, producers, importers, and exporters will be required to submit to EPA quarterly reports of the quantity of CBM in each of their transactions; they will also be required to report the quantity of CBM transformed or destroyed. Producers, importers, and exporters of CBM must also maintain records such as Customs entry forms, bills of lading, sales records, and canceled checks to support their quarterly reports. The quarterly reports may be faxed or mailed to EPA, where they will be handled as confidential business information. EPA will store the submitted information in a computerized database designed to track production, import, and export balances and transfer activities. EPA is currently exploring the possibility of having reports filled and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its ICR to indicate a change in burden hours. EPA will use the information to ensure that the U.S. maintains compliance with the Protocol requirements and to report annually to United Nations Environment Programme the U.S. activity in CBM. EPA will store the submitted information in a computer system designed to track production, import, and export balances and transfer activities. EPA estimates that the information collection will involve approximately 133 respondents: 2 producers, 2 exporters, 8 importers, 100 laboratory certifiers, 8 transformers and destroyers, 6 essential use allowance holders, 2 laboratory suppliers, and 5 laboratory suppliers (reference standards). The total annual industry burden and cost are estimated at 2,580 hours and $201,350, of which $3,000 are annual operating and maintenance (O&M) costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

[3] On March 5, 2001, the Office of Management and Budget (OMB) approved EPA's request for the extension of approval of this ICR. The request for extension was submitted by EPA on November 29, 2000. With that approval, OMB stated that it ''understands that EPA is in the process of developing several rules that would result in revisions to this collection * * * EPA will need to revise this collection as part of those rulemaking processes.'' This ICR revision is one such revision.

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 29, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by November 29, 2002.

F. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule will not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Today's proposed rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's proposed rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by tribal governments or their communities. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355 (5/22/01)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorobromomethane, Exports, Imports, Reporting and recordkeeping requirements, Halon, Ozone layer.

Dated: October 18, 2002.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by:

a. Adding in alphabetical order the definition of Beijing Amendments.

b. Revising the last sentence in the definition of Controlled substance.

The revision and addition read as follows:

§ 82.3 Definitions.

* * * * *

Beijing Amendments means the Montreal Protocol, as amended at the Eleventh Meeting of the Parties to the Montreal Protocol in Beijing in 1999.

* * * * *

Controlled substance * * * Class I substances are further divided into eight groups, Group I, Group II, Group III, Group IV, Group V, Group VI, Group VII, and Group VIII, as set forth in appendix A to this subpart.

* * * * *

3. Section 82.4 is amended by:

a. Revising the first sentence of paragraph (b),

b. Revising the first sentence of paragraph (d),

c. Adding paragraph (l)(5).

The revisions and addition read as follows:

§ 82.4 Prohibitions.

* * * * *

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN **Federal Register**], for any class I, Group VIII controlled substance, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, or the amount of unexpended Article 5 allowances as allocated under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN **Federal Register**] for any class I, Group VIII controlled substance, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(l) * * *

(5) Import or export any quantity of a controlled substance listed in Class I, Group VIII, in Appendix A to this subpart, from or to any foreign state not Party to the Beijing Amendments (as noted in Appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Beijing Amendments (as noted in Appendix C, Annex 2, to this subpart).

* * * * *

4. Section 82.13 is amended by:

a. Revising paragraph (a).

b. Revising paragraph (f)(1) introductory text.

The revisions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

(f) * * *

(1) Within 120 days of May 10, 1995, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, and within 120 days of [PUBLICATION OF FINAL RULE] for class I, Group VIII controlled substances, every producer who has not already done so must submit to the Administrator a report describing:

* * * * *

5. Appendix A to Subpart A is amended by adding paragraph H. to read as follows:

Appendix A to Subpart A of Part 82—Class 1 Controlled Substances

Class 1 controlled substances	ODP
* * * * *	
H. Group VIII:	
CH_2BrCl (Chlorobromomethane)	0.12

6. Appendix C to Subpart A is revised to read as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties To, The Protocol

Annex 1 to Appendix C of Subpart A—Parties to the Montreal Protocol (as of January 24, 2002)

The check mark [√] means the particular country ratified the Protocol or the specific Amendment package. Amendment packages are identified by the name of the city where the amendment package was negotiated and agreed. Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.shtml.*

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Albania	✔				
Algeria	✔	✔	✔		
Angola	✔				
Antigua and Barbuda	✔	✔	✔	✔	
Argentina	✔	✔	✔	✔	
Armenia	✔				
Australia	✔	✔	✔	✔	
Austria	✔	✔	✔	✔	
Azerbaijan	✔	✔	✔	✔	
Bahamas	✔	✔	✔		
Bahrain	✔	✔	✔	✔	
Bangladesh	✔	✔	✔	✔	
Barbados	✔	✔	✔		
Belarus	✔	✔			
Belgium	✔	✔	✔		
Belize	✔	✔	✔		
Benin	✔	✔	✔		
Bolivia	✔	✔	✔	✔	
Bosnia and Herzegovina	✔				
Botswana	✔	✔	✔		
Brazil	✔	✔	✔		
Brunei Darussalam	✔				
Bulgaria	✔	✔	✔	✔	
Burkina Faso	✔	✔	✔		

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Burundi	✔	✔	✔	✔	✔
Cambodia	✔				
Cameroon	✔	✔	✔		
Canada	✔	✔	✔	✔	✔
Cape Verde	✔	✔	✔	✔	
Central African Republic	✔				
Chad	✔	✔	✔	✔	
Chile	✔	✔	✔	✔	✔
China	✔	✔			
Colombia	✔	✔	✔		
Comoros	✔	✔			
Congo	✔	✔	✔	✔	✔
Congo, Democratic Republic of	✔	✔	✔		
Costa Rica	✔	✔	✔		
Cote d'Ivoire	✔	✔			
Croatia	✔	✔	✔	✔	
Cuba	✔	✔	✔		
Cyprus	✔	✔			
Czech Republic	✔	✔	✔	✔	✔
Denmark	✔	✔	✔		
Djibouti	✔	✔	✔	✔	
Dominica	✔	✔			
Dominican Republic	✔	✔	✔		
Ecuador	✔	✔	✔		
Egypt	✔	✔	✔	✔	
El Salvador	✔	✔	✔	✔	
Estonia	✔	✔	✔		
Ethiopia	✔				
European Community	✔	✔	✔	✔	
Federated States of Micronesia	✔	✔	✔	✔	✔
Fiji	✔	✔	✔		
Finland	✔	✔	✔	✔	✔
France	✔	✔	✔		
Gabon	✔	✔	✔	✔	✔
Gambia	✔	✔			
Georgia	✔	✔	✔	✔	
Germany	✔	✔	✔	✔	✔
Ghana	✔	✔	✔		
Greece	✔	✔	✔		
Grenada	✔	✔	✔	✔	
Guatemala	✔	✔	✔	✔	✔
Guinea	✔	✔			
Guyana	✔	✔	✔	✔	
Haiti	✔	✔	✔	✔	
Honduras	✔	✔	✔		
Hungary	✔	✔	✔	✔	
Iceland	✔	✔	✔	✔	
India	✔	✔			
Indonesia	✔	✔	✔		
Iran, Islamic	✔	✔	✔	✔	
Ireland	✔	✔	✔		
Israel	✔	✔	✔		
Italy	✔	✔	✔	✔	
Jamaica	✔	✔	✔		
Japan	✔	✔	✔		
Jordan	✔	✔	✔	✔	✔
Kazakhstan	✔	✔			
Kenya	✔	✔	✔	✔	
Kiribati	✔				
Korea, Democratic People's Republic of	✔	✔	✔	✔	✔
Korea, Republic of	✔	✔	✔	✔	
Kuwait	✔	✔	✔		
Kyrgyzstan	✔				
Lao, People's Democratic Republic	✔				
Latvia	✔	✔	✔		
Lebanon	✔	✔	✔	✔	
Lesotho	✔				
Liberia	✔	✔	✔		
Libyan Arab Jamahiriya	✔	✔			
Liechtenstein	✔	✔	✔		
Lithuania	✔	✔	✔		

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Luxembourg	✔	✔	✔	✔	✔
Madagascar	✔	✔	✔	✔	✔
Malawi	✔	✔	✔		
Malaysia	✔	✔	✔	✔	✔
Maldives	✔	✔	✔	✔	
Mali	✔	✔			
Malta	✔	✔			
Marshall Islands	✔	✔	✔		
Mauritania	✔				
Mauritius	✔	✔	✔		
Mexico	✔	✔	✔		
Moldova	✔	✔	✔		
Monaco	✔	✔	✔	✔	
Mongolia	✔	✔	✔		
Morocco	✔	✔	✔		
Mozambique	✔	✔	✔		
Myanmar	✔	✔			
Namibia	✔	✔			
Nauru	✔				
Nepal	✔	✔			
Netherlands	✔	✔	✔	✔	✔
New Zealand	✔	✔	✔	✔	✔
Nicaragua	✔	✔	✔		
Niger	✔	✔	✔	✔	
Nigeria	✔	✔	✔	✔	
Norway	✔	✔	✔	✔	✔
Oman	✔	✔	✔		
Pakistan	✔	✔	✔		
Palau	✔	✔	✔	✔	✔
Panama	✔	✔	✔	✔	
Papua New Guinea	✔	✔			
Paraguay	✔	✔	✔	✔	
Peru	✔	✔	✔		
Philippines	✔	✔	✔		
Poland	✔	✔	✔	✔	
Portugal	✔	✔	✔		
Qatar	✔	✔	✔		
Romania	✔	✔	✔	✔	
Russian Federation	✔	✔			
Rwanda	✔				
Saint Kitts & Nevis	✔	✔	✔	✔	
Saint Lucia	✔	✔	✔	✔	✔
Saint Vincent and the Grenadines	✔	✔	✔		
Samoa	✔	✔	✔	✔	✔
Sao Tome and Principe	✔	✔	✔	✔	✔
Saudi Arabia	✔	✔	✔		
Senegal	✔	✔	✔	✔	
Seychelles	✔	✔	✔		
Sierra Leone	✔	✔	✔	✔	✔
Singapore	✔	✔	✔	✔	
Slovakia	✔	✔	✔	✔	
Slovenia	✔	✔	✔	✔	
Solomon Island	✔	✔	✔	✔	
Somalia	✔	✔	✔	✔	✔
South Africa	✔	✔	✔		
Spain	✔	✔	✔	✔	
Sri Lanka	✔	✔	✔	✔	
Sudan	✔	✔	✔		
Suriname	✔				
Swaziland	✔				
Sweden	✔	✔	✔	✔	
Switzerland	✔	✔	✔		
Syrian Arab Republic	✔	✔	✔	✔	
Tajikistan	✔	✔			
Tanzania, United Republic of	✔	✔			
Thailand	✔	✔	✔		
The Former Yugoslav Republic of Macedonia	✔	✔	✔	✔	
Togo	✔	✔	✔	✔	✔
Tonga	✔				
Trinidad and Tobago	✔	✔	✔	✔	
Tunisia	✔	✔	✔	✔	

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Turkey	✔	✔	✔		
Turkmenistan	✔	✔			
Tuvalu	✔	✔	✔	✔	
Uganda	✔	✔	✔	✔	
Ukraine	✔	✔			
United Arab Emirates	✔				
United Kingdom	✔	✔	✔	✔	✔
United States of America	✔	✔	✔		
Uruguay	✔	✔	✔	✔	
Uzbekistan	✔	✔	✔		
Vanuatu	✔	✔	✔		
Venezuela	✔	✔	✔		
Viet Nam	✔	✔	✔		
Yemen	✔	✔	✔	✔	
Yugoslavia	✔				
Zambia	✔	✔			
Zimbabwe	✔	✔	✔		

Annex 2 to Appendix C of Subpart A—Nations Complying With, But Not Parties To, the Protocol [Reserved]

7. Appendix F. to Subpart A. is amended by:

a. Removing entries F. and G.

b. Under A. Class I: by adding entries 6, 7, and 8.

The additions read as follows:

Appendix F to Subpart A—Listing of Ozone Depleting Chemicals

Controlled Substance	ODP	AT L	CLP	BLP
A. Class I				
* * * * *				
6. Group VI:				
CH_3Br-Bromomethane (Methyl Bromide)	0.7		[reserved].	
7. Group VII:				
$CHFBr_2$-	1.00		[reserved].	
CHF_2Br-(HBFC–22B1)	0.74		[reserved].	
CH_2FBr	0.73		[reserved].	
C_2HFBr_4	0.3–0.8		[reserved].	
$C_2HF_2Br_3$	0.5–1.8		[reserved].	
$C_2HF_3Br_2$	0.4–16		[reserved].	
C_2HF_4Br	0.7–1.2		[reserved].	
$C_2H_2FBr_3$	0.1–1.1		[reserved].	
$C_2H_2F_2Br_2$	0.2–1.5		[reserved].	
$C_2H_2F_3Br$	0.7–1.6		[reserved].	
$C_2H_3FBr_2$	0.1–1.7		[reserved].	
$C_2H_3F_2Br$	0.2–1.1		[reserved].	
C_2H_4FBr	0.07–0.1		[reserved].	
C_3HFBr_6	0.3–1.5		[reserved].	
$C_3HF_2Br_5$	0.2–1.9		[reserved].	
$C_3HF_3Br_4$	0.3–1.8		[reserved].	
$C_3HF_4Br_3$	0.5–2.2		[reserved].	
$C_3HF_5Br_2$	0.9–2.0		[reserved].	
C_3HF_6Br	0.7–3.3		[reserved].	
$C_3H_2FBr_5$	0.1–1.9		[reserved].	
$C_3H_2F_2Br_4$	0.2–2.1		[reserved].	
$C_3H_2F_3Br_3$	0.2–5.6		[reserved].	
$C_3H_2F_4Br_2$	0.3–7.5		[reserved].	
$C_3H_2F_5Br$	0.9–1.4		[reserved].	
$C_3H_3FBR_4$	0.08–1.9		[reserved].	
$C_3H_3F_2Br_3$	0.1–3.1		[reserved].	
$C_3H_3F_3Br_2$	0.1–2.5		[reserved].	
$C_3H_3F_4Br$	0.3–4.4		[reserved].	
$C_3H_4FBr_3$	0.03–0.3		[reserved].	
$C_3H_4F_2Br_2$	0.1–1.0		[reserved].	
$C_3H_4F_3Br$	0.07–0.8		[reserved].	
$C_3H_5FBr_2$	0.04–0.4		[reserved].	
$C_3H_5F_2Br$	0.07–0.8		[reserved].	
C_3H_6FB	0.02–0.7		[reserved].	
8. Group VIII:				
CH_2BrCl (Chlorobromomethane)	0.12		[reserved].	

[FR Doc. 02–27340 Filed 10–28–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Washington Population of the Western Gray Squirrel as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the western gray squirrel (*Sciurus griseus griseus*) in Washington under the Endangered Species Act of 1973, as amended. After reviewing the petition and all available scientific and commercial information, we find that the petition presents substantial information indicating that there may be one or more distinct population segments (DPS) of western gray squirrels in Washington for which listing may be warranted. With the publication of this notice, we are initiating a status review of the western gray squirrel subspecies *Sciurus griseus griseus* in Washington. In addition to requesting information on the status of the western gray squirrel in Washington, we are requesting information on the subspecies rangewide for the purpose of determining if one or more of the Washington populations of this subspecies constitutes a DPS, or constitutes a significant portion of the range of the subspecies. We will prepare a 12-month finding on our determination.

DATES: The finding announced in this document was made on October 17, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by December 30, 2002.

ADDRESSES: Submit information, comments, or questions concerning this petition finding to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. The petition, supporting information, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9518).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533(b)(3)(A)), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

On January 4, 2001, we received a petition dated December 29, 2000, from the Northwest Ecosystem Alliance, Bellingham, Washington, and the Tahoma Audubon Society, University Place, Washington. The petition and cover letter clearly identified itself as such and contained the names, addresses, and signatures of the petitioning organizations' representatives. Information relating to the taxonomy, the historic and present population status and trends, threats, and a discussion of the qualifications of the western gray squirrel (*Sciurus griseus griseus*) in Washington as a distinct vertebrate population segment (DPS) were included in the petition. The petition requested an emergency rule to list the Washington population(s) of the western gray squirrel as threatened or endangered under the Act or, as an alternative, the immediate emergency listing of just the southern Puget Sound population of western gray squirrels followed by a later consideration of the ''full Washington State distinct population segment under the standard processing requirements.'' The petition also requested the designation of critical habitat for the western gray squirrel in Washington, coincident with the listing.

In a letter dated March 9, 2001, we acknowledged receipt of the petition (Service, *in litt.,* 2001). We stated that we were unable to address the petition at that time because we were required to spend nearly all of our listing and critical habitat funding for fiscal year 2001 to comply with court orders and judicially approved settlement agreements. We also indicated in our letter that, from our initial review of the petition, there was no emergency situation for Washington population(s) of the western gray squirrel. The proposed construction of the Cross-Base Highway, identified by the petitioners as an imminent threat to the Puget Sound population, was not scheduled to be constructed for at least 5 years.

On May 6, 2002, we received a 60-day Notice of Intent to sue from the Northwest Ecosystem Alliance and Tahoma Audubon Society (plaintiffs) alleging we had violated the Act by failing to make a finding on whether the petition to list the Washington population(s) of the western gray squirrel presented substantial information indicating that listing may be warranted. On July 17, 2002, the plaintiffs filed a lawsuit in United States District Court for the District of Oregon to compel us to comply with the listing requirements of the Act. We are making this 90-day petition finding in accordance with the court's order in this case, *Northwest Ecosystem Alliance and Tahoma Audubon Society* v. *U.S. Fish and Wildlife Service, Badgely, Williams, and Norton,* No. CV 02–945 (D. OR.).

The western gray squirrel belongs to the mammalian order Rodentia, the suborder Sciurognathi, and the family Sciuridae. There are three subspecies of western gray squirrel: *Sciurus griseus griseus,* which ranges from central Washington to the western Sierra Nevada Range in central California; *Sciurus griseus anthonyi,* which ranges from the southern tip of the California Coast Range into south-central California; and *Sciurus griseus nigripes*, which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County (Hall 1981). *Sciurus griseus griseus* was described from a squirrel seen by Lewis and Clark at the Dalles in Wasco County, Oregon (Rodrick 1987).

The western gray squirrel is the largest native tree squirrel in the Pacific Northwest and is the only member of the genus *Sciurus* native to Washington. Two other members of the genus found in Washington are introduced species: the eastern gray squirrel (*Sciurus carolinensis*) and the fox squirrel (*Sciurus niger*) (Washington Department of Wildlife (WDW) 1993). Other common names applied to the western gray squirrel include the silver gray squirrel, California gray squirrel, Oregon gray squirrel, Columbian gray squirrel,

and gray squirrel (Northwest Ecosystem Alliance and Tahoma Audubon Society 2000).

The historic distribution of the western gray squirrel was once widespread throughout Washington, Oregon, California, and in western Nevada along the base of the Carson Range and in Washoe County (Linders 2000). Currently, the species is rare in Nevada. Western gray squirrels in California still occur in the interior valley margin of the Cascades, Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, and Laguna Mountains, and west through the Coast Range to the Pacific Coast (Carraway and Verts 1994). In Oregon, the western gray squirrel distribution extends along the southwestern foothills of the Coast Range northward to Coos Bay, north along the eastern side of the Coast Range and along both sides of the Cascades into Washington (Verts and Carraway 1998).

Washington Western Gray Squirrel Populations

Historically, western gray squirrels probably ranged throughout western Washington and the Cascades in association with oak communities. One hypothesis suggests that the western gray squirrel migrated northward into Washington with the spread of Oregon white (Garry) oak (*Quercus garryana*) from the Willamette Valley in Oregon. Consequently, the species was more widely distributed in prehistoric times and has diminished in recent times along with the decrease in distribution of oak woodlands (WDW 1993). Western gray squirrels in Washington once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascades, and north along the eastern slopes of the Cascades to Lake Chelan. Documentation for western gray squirrels includes records for Whatcom, Pierce, Thurston, Grays Harbor, Lewis, Clark, Skamania, Klickitat, Yakima, Kittitas, Chelan, and Okanogan counties in Washington (WDW 1993; Washington Department of Fish and Wildlife 1998). The subspecies' range extensions into Chelan and Okanogan counties, beyond the range of Oregon white oak, may have resulted from plantings of walnut trees by early settlers. The range extension north into Okanogan County occurred since 1965 (WDW 1993). Currently, in Washington, only three geographically isolated western gray squirrels remain: one in Thurston and Pierce counties, one in Klickitat and Yakima counties, and one in Chelan and Okanogan counties (Bayrakci 1999; Linders 2000; WDW 1993).

Distinct Vertebrate Population Segment

We must consider any species for listing under the Act if there is sufficient information to indicate such action may be warranted. ''Species'' is defined by the Act as including any subspecies of fish and wildlife or plants, and any distinct population segment of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration-Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722) to help us in determining what constitutes a distinct population segment (DPS). Under this policy, we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) Discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

The DPS analysis is a stepwise analysis; significance is considered only when discreteness of the population has been determined, and the conservation status is considered only when both discreteness and significance of the population have been established. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries. If the population is determined to be discrete, we determine significance by assessing the distinct population segment's importance and/or contribution to the species throughout its range. Measures of significance may include, but are not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population meets the discreteness and significance criteria for a distinct population segment, we evaluate the threats to determine if endangered or threatened status based on the Act's standards is warranted. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

In requesting to list the ''Washington population(s)'' of the western gray squirrel as threatened or endangered, the petition describes three small disjunct populations in Washington that ''are separated by a distance of more than 300 km, and western gray squirrels are not likely to disperse more than 20 km.'' The degree of isolation of the three populations described in the petition suggest that individuals from the three populations would not naturally interbreed. The petition, however, provides sufficient information on each of the three Washington populations to indicate that we should consider whether one or more of these populations may meet the criteria for listing as a DPS. Threats to some populations of the subspecies include habitat modification and destruction due to fire suppression, logging, overgrazing, highway construction, and residential development. Other threats include fluctuating food supplies, disease, competition, road kills, and illegal shooting. The subspecies is listed as threatened by the State of Washington.

Emergency Listing and Critical Habitat Designation

Petitions for emergency listing and concurrent designation of critical habitat with the listing action, as requested in the petition to list the Washington population(s) of the western gray squirrel, are not expressly provided for by the Act. However, we may address the need for an emergency rule pursuant to section 4(b)(7) of the Act (16 U.S.C. 1533(b)(7). In addition, the Act requests us to designate critical habitat concurrently with listing a species to the maximum extent prudent and determinable (16 U.S.C. 1533(a)(3)(A).

We may issue an emergency rule to list a species if threats to the species constitute an emergency posing significant risk to its continued survival. We consider a species for emergency listing when the immediacy of the threat is so great to a significant portion of the total population that the routine listing

process is not sufficient to prevent large losses that may result in extinction.

Upon receipt of the petition, we reviewed the available information to determine if the existing and foreseeable threats represented an emergency to the western gray squirrel. The petition identified the proposed construction of the Cross-Base Highway in Pierce County as presenting an imminent and significant threat to the well-being of western gray squirrels in south Puget Sound. Consequently, the petitioners requested an emergency listing of the Washington population(s) of the western gray squirrel or, as an alternative, emergency listing the Puget Sound population ''followed by consideration of the full Washington State distinct population segment.''

The currently anticipated schedule for the proposed Cross-Base Highway indicates the Record of Decision will not be completed until August 2003. There is limited funding available for project development beyond the completion of the environmental documentation phase. Before construction can begin, the project will require 2 years for engineering design and 2 years for right-of-way acquisition. Although there will be some overlap in timing, Pierce County anticipates the necessary time for completion of the three phases will not be less than about 5 years (T.G. Ballard, County Engineer, Pierce County Public Works and Utilities, *in litt.,* 2002). Consequently, we have determined that the Cross-Base Highway does not present an imminent threat to the southern Puget Sound population of western gray squirrels, and an emergency listing is not warranted at this time. However, we would initiate an emergency listing if, at any time, we determine that an emergency listing of a species, including a DPS, is warranted.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find the petition presents substantial information that there may be one or more distinct population segments of western gray squirrels in Washington for which listing may be warranted.

With the publication of this notice, we are initiating a status review of *Sciurus griseus griseus* to determine whether one or more of this subspecies' populations in Washington constitute a DPS, and if so, whether listing of such DPS(s) is warranted, not warranted, or warranted but precluded by other pending proposals.

Public Information Solicited

When we make a finding that sufficient information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the western gray squirrel throughout the subspecies' (*Sciurus griseus griseus*) range in Washington, Oregon, California, and Nevada. Information on the status of the subspecies rangewide will assist us in determining if one or more of the Washington populations of western gray squirrels meet the distinct vertebrate population segment criteria, particularly the significance test, or constitute a significant portion of the range.

We request any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of this subspecies of western gray squirrel throughout its range in Washington, Oregon, California, and Nevada. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat. More specifically, for the three Washington populations of the western gray squirrel, we request any available information on: (1) The genetics of these populations, as they relate to each other and to the closest populations in Oregon; (2) the extent to which the two populations east of the Cascade Range are discrete from each other; (3) current status and trends of each of these populations; (4) the presence and status of the subspecies on additional public or private lands; (5) identification of current specific threats to each of the populations; and (6) any additional information that will support the DPS analysis of the significance, as defined in our DPS policy (see Distinct Vertebrate Population Segment section above), of each of these populations to the subspecies as a whole.

If you wish to comment, you may submit your comments and materials concerning this finding to the Manager, Western Washington Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular office hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited herein is available upon request from the Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Dr. Karolee Owens, of the Western Washington Fish and Wildlife Office (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2002.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27297 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 100102D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a

preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The experiment proposes to conduct a study of an experimental bycatch reduction device in order to develop otter trawl gear for the NE Multispecies fishery that would result in reduced catch of Atlantic cod. The EFP would allow these exemptions for one commercial vessel for not more than 5 days of sea trials. All experimental work would be monitored by Manomet Center for Conservation Sciences personnel. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before November 13, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Manomet EFP Proposal for Inclined Mesh Bycatch Reduction Device.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Policy Analyst, 978–281–9347.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by Manomet Center for Conservation Sciences on August 19, 2002.

The EFP would allow for exemptions from the Gulf of Maine (GOM) Regulated Mesh Area gear requirements at 50 CFR 648.80(a)(3)(i) and the days-at-sea (DAS) requirements at 648.82(a). The EFP would exempt one federally permitted commercial fishing vessel from the following two requirements of the NE Multispecies FMP: The requirement to use a minimum mesh size of 6.0 inch (15.2 cm) diamond mesh or 6.5 inch (16.5 cm) square mesh in the body and extension of a trawl net while fishing in the GOM Regulated Mesh Area; and the requirement to use a day-at-sea (DAS) while targeting groundfish.

The goal of this study is to assess the utility of a bycatch reduction device in the GOM groundfish fishery. The specific trawl design to be tested is referred to as an inclined separation panel. The separation panel consists of 4 inch (10.2 cm) diamond mesh sewn in the extension and codend of a trawl (with 6.5–inch (16.5–cm) diamond mesh codend). The vessel will target mixed groundfish (yellowtail flounder, winter flounder, American plaice, Atlantic cod, and summer flounder). All undersized fish would be returned to the sea as quickly as possible after measurement. The incidental catch is expected to be comprised of skates, dogfish, sculpin and sea robin. The incidental catch of these species is expected to be minimal and efforts will be made to return incidentally caught species to the sea as quickly as possible. According to the applicant, a trawl net of similar design has been used in Irish Sea fisheries to separate cod from other roundfish and flatfish, with a success rate of approximately 80 percent.

The applicant requested that the research be conducted in the GOM in the area north of 42° 30' N. lat. and west of 69° 00' W. long. However, due to the severely overfished condition of the Cape Cod stock of yellowtail flounder, NMFS will confine the research to the area north of the stock boundary 42° 50' N. lat. The vessel would conduct a total of approximately 25 tows of 20 to 30 minutes duration over a period of 5 sea days. The tows would be recorded using a video camera in order to verify proper net functioning and to record fish behavioral reactions. Fish retained by the upper and lower codends would be counted, weighed and measured, and all legal catch sold. The vessel would be exempted from 5 DAS in order to provide compensation for a portion of the cost of the research.

If the research results prove similar to the 80–percent success rate reported by the Irish industry, the applicant intends to conduct future research to fine-tune the use of the net and conduct fleetwide trials with the hope of integrating a bycatch reduction device requirement into the FMP.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27511 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 021017239–2239–01; I.D. 091902F]

RIN 0648–AQ15

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2003 Specifications and Foreign Fishing Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, 2003 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2003 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish proposed specifications for the upcoming fishing year and to provide an opportunity for public comment. This action also proposes an inseason adjustment procedure for the 2003 mackerel joint venture processing (JVP) annual specifications. Finally, NMFS proposes a revision to the method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this action is to promote the development and conservation of the MSB resources.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on November 27, 2002.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm.*

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments-2003 MSB Specifications.'' Comments also may be sent via

facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. Because the regulations found in § 648.20 also specify that IOY for squid is equal to the combination of RQ and DAH, there will be no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

In addition, the regulations at § 648.21(g) allow the specification of quota set-asides to be used for research purposes. For 2003, the Council recommended quota set-asides of up to 2 percent of IOY for Atlantic mackerel and butterfish; and of up to 3 percent of IOY for squids. The set-asides would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2003 based on research priorities previously identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission was May 13, 2002. On July 10, 2002, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panelist comments, two *Loligo* squid project proposals were recommended for approval and forwarded to the NOAA Grants Office for award. Consistent with the recommendations, the quotas in this proposed rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish an action in the **Federal Register** restoring the unused set-aside amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2003 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1.—PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2003

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	[1] N\A	16,000
ABC	17,000	24,000	347,000	7,200
IOY	[5] 16,872.5	24,000	[2] 175,000	5,900
DAH	16,872.5	24,000	[3] 175,000	5,900
DAP	16,872.5	24,000	150,000	5,900
JVP	0	0	[4] 10,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 20,000 mt at discretion of Regional Administrator.
[5] Excludes 127.5 mt for Research Set-Aside (RSA).

2003 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is F_{MSY} (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (¼ of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (½ B_{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2003 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt. The proposed IOY for the 2003 Atlantic mackerel fishery is 175,000 mt, which is equal to the proposed DAH. The specification for DAH is computed by totaling the estimated recreational catch, the proposed DAP, and the proposed JVP. The 175,000 mt proposed DAH is comprised of 15,000 mt recreational; 150,000 mt DAP; and 10,000 JVP.

The Council recommends, and NMFS proposes, to reduce JVP by 10,000 mt and increase DAP for the Atlantic mackerel fishery by 100,000 mt. The DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey, which is intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, from 1994 through 2002, response to this voluntary survey was incomplete and did not contain projections from some large processors. This year, in place of the survey, the Council relied on testimony presented by domestic processors during its May 2, 2002, meeting concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic

processors' capacity to process mackerel. Therefore, the Council has recommended, and NMFS proposes, a specification of 10,000 mt of JVP for the 2003 fishery, with a possible increase to 20,000 mt later in 2003. If additional applications for JVP are received, the Council could authorize NMFS to increase this allocation to 20,000 mt by publishing a notice in the **Federal Register** and providing a 30-day comment period.

The Council also recommended, and NMFS proposes, a TALFF of zero. The Council chose to specify an IOY that results in a TALFF of zero despite the minimal loss to the Nation that may result from the loss of poundage fees collected from foreign vessels. The Council believes that the development of the domestic mackerel fishery results in the greatest resource benefits to the nation. With the 100,000 mt increase in DAP, the Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of domestic mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2003 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JV allocation for 2003 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy, F_{MAX}. Max OY is specified as the catch associated with F_{MAX}. The biomass target is specified as B_{MSY}.

NMFS' Northeast Fisheries Science Center (NEFSC) fall 2000 and spring 2001 survey data, length based virtual population analyses results, scale survey biomass estimates, and production modeling estimates all indicate that *Loligo* squid biomass was high in 2002 and 2001. The most recent stock assessment for *Loligo* squid (the 34th Northeast Regional Stock Assessment Workshop, 2002 (SAW–34)) concluded overfishing is not occurring and recommended that the Council maintain the catch of 20,000 mt (to include both landings and discards).

Based on the assumption that the stock will be at or near B_{msy} in 2003, the Council recommended no changes from the 2002 quota level. The 2003 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt, based on projections from SAW–34. The regulations continue to specify Max OY as the yield associated with $F_{max,}$ or 26,000 mt. Thus, the 2003 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2003 fishery is 17,000 mt.

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis, so that DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S. commercial fishing vessels, so that DAP equals DAH. The regulations found in § 648.20 do not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, therefore, JVP and TALFF are zero.

Distribution of the Annual *Loligo* Squid Quota

Since 2001, the annual DAH for *Loligo* squid has been allocated into quarterly periods. The Council and NMFS recommended no change from the 2002 quarterly distribution system. Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this proposed rule adjusts the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2003 quarterly allocations would be as follows:

TABLE 2.—*Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric tons[1]	Research set-aside
I (Jan–Mar)	33.23	5,606.7	N/A
II (Apr–Jun)	17.61	2,971.3	N/A
III (Jul–Sep)	17.3	2,918.9	N/A
IV (Oct–Dec)	31.86	5,375.6	N/A
Total	100	16,872.5	127.5

[1] Quarterly allocations after 127.5 mt RSA deduction

Also unchanged from 2002, the Council recommended that the 2002 directed fishery be closed in Quarters I–III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV.

Carry-Over of Quarterly Quota Underages

The Council has also recommended, and NMFS proposes, to modify the method for carrying over *Loligo* squid Quarterly underages for 2003 and subsequent fishing years. Currently, by default, Quarterly underages from Quarters II and III carry over into Quarter IV because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 70 percent of the Quarter I allocation, the underage below 70 percent is to be applied to the Quarter III allocation. The Council has recommended, and NMFS proposes that, in the event that the Quarter I landings for *Loligo* squid are less than

80 percent of the Quarter I allocation, the underage below 80 percent would be applied to the Quarter III allocation. NMFS is publishing the measure in this proposed rule as presented in the Council's submission, but notes that the Council minutes for the May 2, 2002, meeting lists the Council's motion for this proposed change, however, it was not consistent with the intent of the action. This proposed rule publishes the measure as Council staff believes the Council intended. NMFS requests Council confirmation of its intent during the public comment period.

Illex

The overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Maximum OY is specified as the catch associated with a fishing mortality rate of F_{MSY}. The biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as ½ B_{MSY}.

The most recent assessment of the *Illex* squid stock (SAW–29) concluded that the stock is not overfished and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* squid stock is fully exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW–29. However, an upper bound on annual F was computed for the U.S. Exclusive Economic Zone portion of the stock, based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994–1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW–29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS proposes, that the specification of Max OY and ABC remain unchanged from 2002 at 24,000 mt (the yield associated with F_{MSY}). The directed fishery for *Illex* squid would remain open until 95 percent of the DAH is taken (22,800 mt). Once 95 percent of the DAH is estimated to have been taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would take effect for the remainder of the fishing year. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than 5,000 lb (2,268 kg) in a single calendar day. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's ability to harvest and to process the OY from this fishery.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2003 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low, at 2,797 mt, 1,964 mt, 2,116 mt and 1,432 mt for the 1997 through 2000 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have constrained this fishery.

For the 2003 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. The regulations found in § 648.20 authorizes the specification of JVP or TALFF specifications for butterfish only for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA in section 3.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternatives or any of the alternatives considered for this action. A copy of the IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**), from the Council (see **ADDRESSES**) or via the Internet at *http:/www.nero.NMFS.gov*. A summary of the analysis follows:

The numbers of potential fishing vessels in the 2002 fisheries are 384 for *Loligo* squid/butterfish, 73 for *Illex* squid, 2,242 for Atlantic mackerel, and 1,828 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed DAH specifications of 175,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2003 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1997–2001, *Loligo* squid landings averaged 16,771 mt. If the 2002 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1997–2001. NMFS also proposes to modify the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 80 percent of the Quarter I allocation would be applied to Quarter III. Currently, all underages from Quarter I less than 70 percent are applied to the Quarter III allocation. By making the increased underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when that quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2003 specifications at the same level as 2002. The Council rejected this option because of concerns associated with the potential for rapid expansion of the shore-side processing sector of this industry in 2003. If rapid expansion of the processing sector did occur early in 2003, and landings exceeded 85,000 mt, an inseason adjustment to IOY would be necessary. However, the majority of mackerel landings occur from January through March, and it is unlikely that an inseason adjustment could be made in time for quota to be available to industry for that period. The result would be the unnecessary closure of the fishery that could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2002 annual specifications for Atlantic mackerel in 2003. A second alternative considered for Atlantic mackerel was to

set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The Council considered the level of foregone yield under this alternative unacceptable.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 23.3-percent reduction from the 2001 level. This was the same level as the initial quota allocated for the 2000 fishing year (an inseason adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt; 65 FR 60118, October 10, 2000). If the 13,000-mt alternative was adopted for the 2002 fishing year, 15 of the 447 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 365 vessels would experience a less than 5-percent reduction in revenue or an increase in revenue. A second alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock is technically not protected from overfishing, some negative economic and social impacts could be expected from this alternative in the long term if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the proposed 2003 annual specifications for *Loligo*.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and a second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the Council considered the first alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, under the second alternative an ABC of 19,000 mt would not allow the fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected by the Council.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (f)(3) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2003, if commercial landings in Quarter I are determined to be less than 80 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 80 percent will be reallocated to Quarter III (*e.g.*, if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 80 percent, or 30,000 lb (66,139 kg), would be reallocated to Quarter III. A balance of 20 percent, or 20,000 lb (44,092 kg), would remain in Quarter I).

* * * * *

[FR Doc. 02–27506 Filed 10–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021017238–2238–01; I.D. 092602I]

RIN 0648–AQ31

Fisheries of the Northeastern United States; Proposed 2003 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2003 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

SUMMARY: NMFS proposes quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2003. Regulations implementing the Fishery Management Plan for Surf Clams and Ocean Quahog Fisheries require NMFS to propose for public comment specifications for the 2003 fishing year. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from Atlantic waters north of 43°50' N. lat. in 2003.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on November 27, 2002.

ADDRESSES: Written comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—2002 Clam and Quahog Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm.*

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected must allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provided that a small artisanal fishery for ocean quahogs in the waters north of 43°50′ N. lat. has an annual quota with an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery. The fishing quotas must be in compliance with overfishing definitions for each species. In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 2003 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries are shown here. The status quo levels of 2002 for both the regular ocean quahog and the Maine mahogany ocean quahog are proposed to be maintained for 2003, but the surfclam quota would be increased by 4 percent from 3.135 million bu to 3.250 million bu (1.669 million hL to 1.730 million hL).

PROPOSED 2003 SURFCLAM/OCEAN QUAHOG QUOTAS

Fishery	2003 final quotas (bu)	2003 final quotas (hL)
Surfclam [1]	3,250,000	1,730,000
Ocean quahog [1]	4,500,000	2,396,000
Maine mahogany quahog [2]	100,000	35,240

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters.
[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters.

Surfclams

The Council's recommended 2003 quota of 3.25 million bu (1.730 million hL) for surfclams is the third change in the quota since 1995. In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 years, (OY = 3.4 million bushels (1.810 million hL)). The most recent assessment for surfclams (SAW 30) indicated that the resource is at a high level of biomass, is under-exploited, and can safely sustain increased harvests, but cautioned that it may be advantageous to avoid localized depletion. Industry reports that the current demand for clam products is very strong. In fact, all of the 2.850 million bu (1.517 million hL) quota was harvested from Federal waters in 2001, with landings of surfclams from both state and Federal waters increasing by 1 percent in 2001 to a total of 4.05 million bu (2.156 million hL). However, recent information reported by industry participants in their vessel trip reports has shown a reduction in the landings per unit of effort, an important indicator that the annual quota is approaching the OY for the resource. The majority of the surfclam catch continues to be derived from one area (northern New Jersey). Based on the information and advice from the most recent assessment for surfclams, the Council recommends an increase of 4 percent from the 2002 level of 3.135 million bu (1.669 million hL), rather than taking the entire allowable maximum increase in a single year. This would result in a 2003 quota of 3.25 million bu (1.720 million hL).

Ocean Quahogs

The Council has recommended a 2003 quota of 4.5 million bu (2.396 million hL) for ocean quahogs. This quota would be identical to that adopted for the past 4 years, but represents an increase of 13 percent from the 1998 quota level. Although ocean quahog landings have been on a declining trend since the 4.9-million bu (2.609-million hL) peak in 1992, quahog landings in fishing year 2001 increased by approximately 0.5 million bu (0.266 million hL) from 2000 levels, to a total of 3.69 million bu (1.965 million hL), or 82 percent of the annual quota. Explanations as to why the annual quota has not been fully harvested include the observation that productivity of existing ocean quahog beds has been steadily declining as the formerly dense beds of quahogs are fished down, and the fact that fuel prices have increased substantially in the past 3 years, creating heightened costs of traveling long distances to fish offshore beds. Due to these higher costs, industry has been increasingly substituting surfclams for ocean quahog sales. These combined factors have led to the underharvest of the ocean quahog quota. Based on advice from SAW 31, the Council recommends maintaining the ocean quahog quota for 2003 at the 2002 level of 4.50 million bu (2.396 million hL).

The Atlantic surfclam and ocean quahog quotas are specified in standard bushels of 53.24 L. per bushel, while the Maine mahogany ocean quahog quota is specified in ''Maine'' bu of 35.24 L per bu. (see section 648.2 for definitions of ''bushel'' and ''Maine bushel''). Because Maine mahogany ocean quahogs are the same species as ocean quahogs, both fisheries are combined and share the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine mahogany quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

The Council has recommended that the Maine mahogany ocean quahog quota remain unchanged from the 2002 quota level at 100,000 Maine bu (35,240 hL) for 2003. No additional information on the impacts of the mahogany quahog quota that would allow a more in-depth analysis of the stock and, therefore, allow the quota to be increased beyond the current maximum level of 100,000 Maine bu (35,240 hL) is available at this time. An effort within the State of Maine is currently underway to initiate a scientific survey and assessment of the

mahogany ocean quahog resource. From the information currently available, maintaining the quota at its current level for another year will not seriously constrain the fishery or endanger the resource.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be exempt from review under Executive Order 12866.

The Council prepared an IRFA in section 8.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section. This action does not duplicate, overlap, or conflict with any other Federal rules. A summary of the IRFA follows:

Vessels

In 2001, a total of 51 vessels reported harvesting surfclams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2001 gross income for surfclam harvests was $753,682 per vessel, and $678,885 per vessel for ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 31 vessels reported harvests in the clam logbooks, with an average value of $113,181 per vessel. All of these vessels fall within the definition of a small entity. The Council recommends no change in the 2003 quotas for ocean quahogs or Maine mahogany ocean quahogs from their 2002 quotas, and a 4-percent increase in the surfclam quota. Since 2001 harvest levels of 2.855 and 3.691 million bu (1.520 and 1.965 million hL) for surfclams and ocean quahogs, respectively, were below the 2003 proposed quotas, the Council believes that the proposed 2003 quotas may yield a surplus quota available to vessels participating in all these fisheries. This is especially likely to occur in the ocean quahog fishery. In the case of a surplus quota, vessels would not be constrained from harvesting additional product, thus, allowing them to increase their revenues.

The Council analyzed four ocean quahog quota alternatives in addition to the preferred 4.500-million bu (2.396 million hL) option, including 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000 million bu (2.129 million hL) quota would represent a 12-percent decrease from the current 4.500 million bu (2.396 million hL) quota and, assuming the entire quota is harvested, an 8-percent increase in harvest from the 2001 harvest level of 3.691 million bu (1.965 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 63-percent increase in landings from 2001, assuming all the quota were harvested. However, the industry does not have a market available to absorb such a large increase in landings and may not have the vessel capacity necessary to harvest a quota this large. Since all alternatives, including the preferred, would yield increases relative to the actual 2001 landings, increased revenues would be likely to occur.

The Council identified four surfclam quota alternatives in addition to the preferred alternative of 3.250 million bu (1.730 million hL), including 1.850, 2.850, 3.135, and 3.400 million bu (0.985,1.517, 1.669, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surfclams. Adoption of a 1.850 million bu (0.985 million hL) quota would represent a 41-percent decrease from the current 3.135 million bu (1.517 million hL) quota, and a 35-percent decrease from the 2001 harvest level of 2.855 million bu (1.520 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall exvessel revenues. Adoption of the 2.850 million bu (1.517 million hL) quota would be equivalent to the 2001 surfclam landings and would represent a 9-percent decrease from the 2002 quota level of 3.135 million bu (1.517 million hL). Given the current biological status of the surfclam resource, the Council does not believe that a quota reduction is warranted at this time. Adoption of the 3.135 million bu (1.669 million hL) quota would most likely have a limited impact on small entities, since it results in no change from status quo. Adopting the maximum allowable quota of 3.400 million bu (1.810 million hL) for surfclams would allow for an 8-percent increase in the surfclam quota. The Council is not recommending a quota increase of this magnitude at this time, due to uncertainties in the stock assessment. The preferred alternative allows for a 4-percent increase from 3.135 million bu (1.669 million hL) to 3.25 million bu (1.730 million hL). In summation, the Council determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850 million bu (0.985 million hL) alternative for surfclams. The 2.850 million bu (1.517 million hL) and status quo alternative would be restrictive and have a slight to moderate impact on revenues. The resource can support the 4-percent increase in landings and the industry believes it can utilize this additional product and thus have a beneficial impact for the Nation.

The quota for Maine mahogany ocean quahogs is specified at a maximum 100,000 bu (35,240 hL). The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany fishery, in addition to the preferred alternative of 100,000 bu (35,240 hL), including 50,000 bu and 72,466 bu (17,620 and 25,537 hL). Any quota the Council would have recommended below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels.

Processors

In 2001, there were 13 processors that participated in the surfclam and ocean quahog fisheries, plus 10 companies that bought ocean quahogs directly from vessels from within the State of Maine. Of the 13 processors, approximately 5 are responsible for the vast majority of purchases in the exvessel market and sale of processed clam products in appropriate wholesale markets. Impacts to surfclams and ocean quahog processors would most likely mirror the impacts of the various quotas to vessels as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products, and since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to be price-dependant.

Allocation Holders

In 2002, surfclam allocation holders totaled 99, while 63 firms or individuals held ocean quahog allocation. If the recommended quotas are accepted, i.e., no change from 2002 quotas on ocean quahogs, Maine mahogany ocean quahogs, and a slight increase of 4 percent for surfclams, it is likely that impacts to allocation holders or buyers will be minimal. Theoretically,

increases in quota would most likely benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota because of reduction in value. Decreases in quota would most likely have an opposite effect.

Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: October 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–27505 Filed 10–28–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 101702B]

RIN:0648–AP92

Fisheries of the Exclusive Economic Zone off Alaska; Recordkeeping and Reporting Changes to the Individual Fishing Quota Program (IFQ) for Pacific Halibut and Sablefish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA) of Amendments 72/64 to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Amendments 72/64 would implement revisions to the recordkeeping and reporting (R and R) regulations established to monitor and enforce the IFQ Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. The purpose of this action is to reduce reporting burden for processors and registered buyers, while maintaining existing data collection, monitoring, and enforcement capabilities.

DATES: Comments on Amendments 72 and 64 must be received at the following address by December 27, 2002.

ADDRESSES: Comments on Amendments 72/64 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Copies of Amendments 72/64 and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228, patsy.bearden@noaa.gov

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and a 60–day comment period (see section 304(a)(1)(B).

Amendments 72/64 were adopted by the Council in April 2002. If approved by NMFS, these amendments would be combined with regulatory amendments that would relieve some RR requirements for the IFQ fisheries. The amendments are necessary to comply with National Standard 7 (16 U.S.C. 1851(a)(7)), which states, ''Conservation and Management measures shall, where practicable, minimize costs and avoid unnecessary duplication.'' The proposed action that would require FMP amendment is as follows: Eliminate the vessel clearance requirement and replace it with a verbal ''departure report'' prior to leaving the jurisdiction of the Council. This action would modify the requirement in the BSAI and GOA FMPs for vessels with IFQ sablefish catch leaving the jurisdiction of the Council to check in with NMFS at a certified port and have the vessel's hold sealed prior to departure. This action makes no change in current management practices in the IFQ fisheries. This action would relieve some reporting burden and operational restrictions on vessels by allowing vessels leaving the jurisdiction of the Council to provide a verbal ''departure report'' rather than going to a specific port for a vessel clearance. Enforcement personnel are not currently able to effectively determine catch quantity at the vessel clearance port and are unable to seal a vessel's hold without compromising vessel safety. Thus, from a monitoring and enforcement perspective, no effective difference exists between a verbal ''departure report'' and the verbal vessel clearance report. This action could reduce the time vessels are required to stay in port and could reduce operating costs for vessels that are landing catch in locations outside of Alaska. This action would also amend the FMPs to ensure that the scope of the FMPs is within the practical limitations of enforcement to meet the requirements of the FMPs. This action, if adopted, modifies existing recordkeeping and reporting requirements.

Public comments are being solicited on the amendments through the end of the comment period stated in this NOA. A proposed rule that would implement the amendments as well as regulatory amendments proposing other changes to recordkeeping and reporting requirements for the IFQ fisheries will be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendments 72/64 to be considered in the approval/disapproval decision on the amendments, whether specifically directed to the amendments or the proposed rule. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered in the approval/disapproval decision, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: October 23, 2002.

Bruce C. Moorehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27512 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 209
Tuesday, October 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Winema and Fremont Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Winema and Fremont Resource Advisory Committee will meet in Bly, Oregon, for the purpose of developing recommendations for the Winter Fire Rehabilitation Project on the Fremont National Forest.

DATES: The meeting will be held on November 14, 2002.

ADDRESSES: The meeting will be held in the conference room of the Bly Ranger District, Highway 31, in Bly. Send written comments to Winema and Fremont Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 67, Paisley OR 97636, or electronically to *waney@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: W.C. (Bill) Aney, Designated Federal Official, Paisley Ranger District, Fremont and Winema National Forests, P.O. Box 67, Paisley OR 97636, telephone (541) 943–4401.

SUPPLEMENTARY INFORMATION: The meeting will begin at 12:30 p.m. on Thursday, November 14 and end at approximately 4:30 p.m. The agenda will include a review of Forest Plan standards and guidelines related to fire salvage and rehabilitation, supplemental information used to help develop projects, and development of a proposed action by the project interdisciplinary planning team.

All Winema and Fremont Resource Advisory Committee Meetings are open to the public. There will be a time for public input and comment. Interested citizens are encouraged to attend.

Dated: October 15, 2002.

Steven A. Ellis,

Acting Forest Supervisor.

[FR Doc. 02–27327 Filed 10–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Status of Project Proposals, (5) Update on Approved Projects, (6) Draft Addition to Standard Long Form/Possible Action, (7) General Discussion, (8) House Committee Report, (9) Chairman Report.

DATES: The meeting will be held on November 14, 2002, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; EMAIL *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 12, 2002 will have the opportunity to address the committee at those sessions.

Dated: October 23, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–27430 Filed 10–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Meeting

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of New Members and the Re-Appointment of one member to the Economic Development Administration's (EDA) Performance Review Board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, at (202)–482–2537, Room 7412, Washington, DC 20230. The Economic Development Administration's Performance Review Board members are:

Mary Pleffner, Chair, Chief Financial Officer.
Gerald R. Lucas, Director, Office of Strategic Resources, Office of the Secretary.
James L. Taylor, Deputy Chief Financial Officer, Office of the Secretary.
Suzette Kern, Associate Director for Management, and Chief Financial Officer.
Bill Day, EDA Regional Director.
LaVerne H. Hawkins, Executive Secretary, ITA, Office of Human Resources Management. (202) 482–2537.

Dated: October 17, 2002.

Darlene F. Haywood,

Acting Director, Office of Human Resources Management.

[FR Doc. 02–27426 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Pars Company, Inc.; Order Denying Export Privileges

On September 4, 2001, a U.S. District Court in the Eastern District of North

Carolina convicted Pars Company, Inc. of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (''IEEPA''). Specifically, the Court found that Pars Company, Inc. exported and attempted to export goods and technology to a person in a third country with knowledge that the goods and technology were intended to be supplied to Iran.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app 2401–2420 (1994 & Supp. V 1999)) (''Act'')[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating any of a number of federal criminal statutes including the IEEPA shall be eligible to apply for or use any export license issued pursuant to, or provided, by the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) (''Regulations''), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Par Company, Inc.'s conviction for violating the IEEPA, and after providing notice and an opportunity for Pars Company, Inc. to make a written submission to the Bureau of Industry and Security before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Pars Company, Inc.'s export privileges for a period of nine years from the date of its conviction. The nine-year period ends on September 4, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which Pars Company, Inc. had an interest at the time of its conviction.

Accordingly, it is hereby *ordered:*

I. Until September 4, 2010, Pars Company, Inc., 200 Mainstail Drive, Cary, North Carolina 27511, (''the denied person'') and, when acting in behalf of it, all of its successors or assigns, officers, representatives, agent and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pars Company, Inc. by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 4, 2010.

VI. In accordance with Part 765 of the Regulations, Pars Company, Inc. may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Pars Company, Inc. This Order shall be published in the **Federal Register**.

Dated: October 21, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 02–27427 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR, 2000 comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 201 (3 CFR, 2001 comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721, August 16, 2002), has continued the Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of the Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty orders.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Amber Musser, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–1777, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Background

On August 30, 2002, the Department published its final determination in the antidumping duty investigation of carbon and certain alloy steel wire rod from Canada. *See Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada*; 67 FR 55782 (August 30, 2002) (Final Determination).

On October 15, 2002 the International Trade Commission (the ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Canada.

Scope of the Orders

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Amended Final Determination

On August 23, 2002, in accordance with section 735(a) of the Act, the Department made a final determination that carbon and certain alloy steel wire rod from Canada is being, or is likely to be, sold in the United States at less than fair value. *See Final Determination*. One of the three respondents[1] and the petitioners[2] filed timely allegations that

[1] The three respondents are Ivaco, Inc., Ispat Sidbec Inc., and Stelco Inc. Of these companies, only Ivaco alleged that the Department had made ministerial errors.

[2] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone

the Department had made ministerial errors in its final determination. We have determined, in accordance with 19 CFR 351.224, that certain ministerial errors were made in the final determination.

For Ispat Sidbec Inc. (Ispat), we corrected errors pertaining to the calculation of credit expense, and revised further-manufacturing costs in the calculation of net U.S. prices.

For Ivaco Inc. (Ivaco), we made a number of corrections, including
- revising freight to warehouse expense, freight revenue, warehousing expense, credit expense and U.S. inventory carrying costs for certain sales.
- revising the margin program to correctly distinguish between Ivaco's export price (EP) and constructed export price (CEP) sales,
- revising the below-cost test to exclude imputed inventory carrying costs,
- subtracting early payment discounts from the gross unit price in the calculation of indirect selling expenses,
- modifying the packing expenses for Ivaco's sales which were further processed by Sivaco Ontario,
- and correcting the figure used for foreign exchange gains and losses, which changed the financial expense ratio.

Finally, for all three respondents we excluded the sales of non-prime material from the arm's-length test. For a detailed discussion of the Department's analysis of the parties' allegations of ministerial errors, see Memorandum to Faryar Shirzad, Assistant Secretary, Import Administration, from Daniel O'Brien, AD/CVD Office 5, Ministerial Error Allegations, dated September 27, 2002. Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of carbon and certain alloy steel wire rod from Canada to correct these ministerial errors.

The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Original Weighted-Average Margin (Percent)	Amended Weighted- Average Margin (Percent)
ISI	2.54	3.86
Ivaco	13.35	9.90
Stelco	1.18*	1.18*
All Others	9.91	8.11

* *De minimis* - excluded from the calculation of the ''All Others'' rate.

Antidumping Duty Order

On October 15, 2002, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing carbon and certain alloy steel wire rod is materially injured within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of imports of the subject merchandise from Canada.

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the EP or CEP of the merchandise for all relevant entries of carbon and certain alloy steel wire rod from Canada. These antidumping duties will be assessed on (1) all unliquidated entries of carbon and certain alloy steel wire rod from Canada entered, or withdrawn from warehouse, for consumption on or after April 10, 2002, the date on which the Department published its notice of preliminary determination in the **Federal Register**, and before October 7, 2002, the date on which the Department was required, pursuant to section 733(d)(3) of the Act, to terminate the suspension of liquidation; and (2) on all merchandise, with the exception of the merchandise produced by Stelco, entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the **Federal Register**. Entries of carbon and certain alloy steel wire rod made between October 7, 2002, and the day preceding the date of publication of this notice in the **Federal Register**, are not liable for the assessment of antidumping duties due to the Department's termination, effective October 7, 2002, of the suspension of liquidation. On or after the date of publication of this notice in the **Federal Register**, the Customs service must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted above.

This notice constitutes the antidumping duty order with respect to carbon and certain alloy steel wire rod from Canada, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: October 18, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–27258 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, A–560–815, A–201–830, A–841–805, A–274–804, A823–812]

Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria Schepker (Brazil) at (202) 482–1756, Michael Ferrier (Indonesia) at (202) 482–1394, Marin Weaver (Mexico) at (202) 482–2336, Thomas Gilgunn (Moldova) at (202) 482–4236, Tisha Loeper-Viti (Trinidad and Tobago) at (202) 482–7425, James Doyle (Ukraine) at (202) 482–0159; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Consolidated Industries, Inc., and North Star Steel Texas, Inc.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Background

On August 26, 2002, the Department issued its final determinations in the antidumping duty investigations of carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Brazil*, 67 FR 55792 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia*, 67 FR 55798 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Moldova*, 67 FR 55790 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago*, 67 FR 55788 (August 30, 2002); and *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002).

On October 15, 2002, the International Trade Commission (the ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. The antidumping duty order and amended final determination for carbon and certain alloy steel wire rod from Canada is published in a separate **Federal Register** notice. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from Moldova and Ukraine.

Scope of the Orders

The merchandise subject to these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Antidumping Duty Orders

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. These antidumping duties will

be assessed on all (1) unliquidated entries of carbon and certain alloy steel wire rod from Mexico, Moldova, Trinidad and Tobago, and Ukraine entered, or withdrawn from warehouse, for consumption on or after April 10, 2002, and before October 7, 2002, and from Brazil on or after April 15, 2002, and before October 12, 2002; and (2) merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these antidumping duty orders in the **Federal Register**. The Department terminated the suspension of liquidation, pursuant to section 733(d)(3) of the Act on October 7, 2002, for Mexico, Moldova, Trinidad & Tobago, and Ukraine, and on October 12, 2002, for Brazil. Entries of carbon and certain alloy steel wire rod made between October 12, 2002, for Brazil and between October 7, 2002, for Mexico, Moldova, Trinidad and Tobago, and Ukraine and the day preceding the date of publication of this notice in the **Federal Register**, are not liable for the assessment of antidumping duties. Regarding the negative critical circumstances determination, we will instruct the Customs service to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after January 10, 2002, but before April 10, 2002. January 10, 2002, is 90 days prior to April 10, 2002, the date of publication of the preliminary determinations in the **Federal Register**. The Department suspended liquidation of entries of carbon and certain alloy steel wire rod from Indonesia on August 30, 2002, the **Federal Register** publication date of the final affirmative antidumping duty determination.

On or after the date of publication of this notice in the **Federal Register**, Customs must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. In the case of Brazil, we will adjust the deposit requirements to account for any export subsidies found in the amended final determination in the companion countervailing duty investigation. The ''all others,'' ''Moldova-wide,'' and ''Ukraine-wide'' rates apply to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin
Brazil.	
Companhia Siderúrgica Belgo Mineira and Belgo-Mineira Participão Indústria e Comércio S.A. (BMP)	94.73%
All Others	74.35%
Indonesia.	
P.T. Ispat Indo	4.06%
All Others	4.06%
Mexico.	
Siderurgica Lazaro Cardenas Las Truchas, S.A. de C.V. (SICARTSA)	20.11%
All Others	20.11%
Moldova.	
Moldova-wide rate	369.10%
Trinidad and Tobago.	
Caribbean Ispat Ltd	11.40%
All Others	11.40%
Ukraine.	
Krivorozhstal State Mine-Metallurgical Works	116.37%
Ukraine-wide rate	116.37%

This notice constitutes the antidumping duty orders with respect to carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27513 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–845, A–122–847]

Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–0189 or Judith Wey Rudman at (202) 482–0192, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR part 351 (2002).

The Petitions

On September 13, 2002, the Department received petitions filed in proper form by the North Dakota Wheat Commission (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat) (collectively, ''the petitioners'').[1] The Department received petition supplements from September 24 through October 21, 2002.

In accordance with section 732(b)(1) of the Act, the petitioners allege that imports of durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the respective domestic industries because they are interested parties as defined in section 771(9)(E) and (F) of the Act, and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra,* ''Determination of Industry Support for the Petitions.''

[1] In the September 13, 2002 petitions, the petitioners identified the North Dakota Wheat Commission as a petitioner for both the durum wheat and hard red spring wheat petitions. However, in a petition supplement dated September 24, 2002, the petitioners informed the Department that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Parties should submit any comments on the file of each (durum wheat and hard red spring wheat) investigation. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of an investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like products referred to in these petitions are the domestic like products defined in the *Scope of Investigations* section, above. Based upon our review of the petitioners' claims, we have accepted the petitioners' definitions of the domestic like products. For further discussion, *see* the October 23, 2002, Memorandum from the Team to Richard W. Moreland, ''Domestic Like Product and Industry Support'' (''*Like Product/Industry Support Memo*''), which is on file in the Central Records Unit (''*CRU*''), Room B–099 of the main Department of Commerce building.

On October 3, 2002, the Department extended the deadline for the initiation determinations to no later than October 23, 2002, in order to establish whether the petitions are supported by the respective domestic industries, pursuant to section 732(c)(1)(B) of the Act. *See* October 3, 2002, Memorandum to Faryar Shirzad from Richard W. Moreland, ''Extension of Deadline for Determining Industry Support.'' The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support. *See* the October 23, 2002, Import Administration AD/CVD Enforcement Initiation Checklist (''*Initiation Checklist*'') and the *Like Product/Industry Support Memo,* both of which are on file in the CRU.

We determine that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like products. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like products, and the requirements of section 732(c)(4)(A)(i) of the Act are met. The Department received no opposition to the petitions.

Accordingly, we determine that these petitions are filed on behalf of the respective domestic industries within the meaning of section 732(b)(1) of the Act.

[2] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

Export Price (''EP'') and Normal Value (''NV'')

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. A more detailed description of these allegations is provided in the *Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, as appropriate.

Export Price

For export price (''EP'') comparisons to home market prices and third country prices, the petitioners based EP on monthly average unit values (''AUVs'') of durum wheat and hard red spring wheat derived from official U.S. import data for the period July 1, 2001 through June 30, 2002. We adjusted the petitioners' calculations of EP for comparisons to CV to include the entire period July 2001 through June 2002. We further adjusted the calculation of EP for hard red spring wheat to correct for certain errors in the petitioners' calculations.

For EP comparisons to home market prices, the petitioners based EP on AUVs for Canadian western amber durum wheat with vitreous kernel content greater than 84 percent (HTSUS 1001.10.00.91) for durum wheat, and AUVs for #1 red spring wheat with a protein content of greater than 13.9 percent but less than or equal to 14.2 percent (HTSUS 1001.90.2016) for hard red spring wheat. For EP comparisons to third country prices, the petitioners based EP on AUVs for Canadian western amber durum wheat with vitreous kernel content greater than 84 percent (HTSUS 1001.10.00.91) for durum wheat, and AUVs for Canadian western red spring wheat with a protein level greater than 14.2 percent (HTSUS 1001.90.20.10) for hard red spring wheat. For EP comparisons to CV, the petitioners included in their calculation of EP AUVs for all of the HTSUS categories included in the scope listed above.[3] The petitioners made no adjustments to EP. For further discussion, *see Initiation Checklist.*

Normal Value

Section 773(a)(1)(C)(iii) of the Act provides that the Department will use third-country prices for purposes of calculating NV if ''the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.'' The petitioners assert that the markets for durum wheat and hard red spring wheat in Canada constitute a ''particular market situation'' within the meaning of section 773(a)(1)(C)(iii) and, therefore, prices in the home market are inappropriate for purposes of calculating NV. The petitioners cite to the Statement of Administrative Action which states that, while ''particular market situation'' is not defined, the Department may be satisfied that one exists ''where * * * there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set.'' SAA at 822.

The petitioners contend that, as a monopoly seller, the CWB conducts a nonmarket operation. In support of its argument, the petitioners cite to the ITC's Section 332 Investigation report which stated that ''all wheat destined for either domestic human consumption or for export must be marketed by or through the CWB.'' (*See Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat,* Investigation No. 332–429, USITC Publication No. 3465 at 3–1 (Dec. 2001) (''*ITC Report*'')). The petitioners further cite to the statement by the ITC that ''although the CWB states that it is a 'commercial entity,' it is immune from the usual commercial threats to a corporation's survival.'' (*See ITC Report* at Chapter 3, pp. 13–16). According to the ITC's findings, ''the Board is in all significant respects an arm of the Government of Canada, with government approval and backing of its borrowing and other financing, which reduces its costs and insulates it from the commercial risks faced by large and small U.S. grain traders.'' (*See ITC Report* at Chapter 3, pp. 13–16) The petitioners assert that the ITC has found that the CWB is a government-backed entity with powers conferred upon it by the Canadian Government under the Canadian Wheat Board Act.

In further support of its claim that the CWB operates as a monopoly, the petitioners cite to the findings of the U.S. Trade Representative (''USTR'') in its 301 investigation. In that investigation, USTR stated that ''the Government of Canada grants the Canadian Wheat Board (CWB) special monopoly rights and privileges which disadvantage U.S. wheat farmers and undermine the integrity of the trading system.'' *See USTR Affirmative Finding in Response to North Dakota Wheat Commission Petition (''USTR Report''),* (February 15, 2002) at 2. Like the ITC, USTR also found that the CWB is ''insulated from commercial risks because the Canadian government guarantees its financial operations, including its borrowing, credit sales to foreign buyers and initial payments to farmers.'' *See USTR Report* at 2.

According to the petitioners, because the CWB operates as a monopoly in the Canadian market without effective competition from imports, the CWB administratively sets prices for durum wheat and hard red spring wheat in Canada, rendering the home market inappropriate for purposes of determining an actual market price. In short, as the only seller in Canada, the CWB operates in Canada free from any competition from domestic sellers. The Canadian Government restricts imports of durum wheat and red spring wheat into Canada, thereby exercising complete control over the Canadian market and insulating the CWB from foreign competition as well.

Finally, the petitioners cite to prior cases in which the Department has used third-country sales as the basis for normal value due to a particular market situation. (*See Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico,* 66 FR 26831, 26834 (May 15, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile* 63 FR 31411 (June 9, 1988)). The petitioners assert that, in making its particular market situation determination in those cases, the Department relied on factors, some of which are also present in this case, such as: the home market industry is export oriented, the home market is incidental to the Canadian wheat industry, and domestically-sold wheat has perfunctory marketing and distribution.

Based on the above, we have determined information reasonably available to the petitioners indicates the existence of a particular market situation which renders price comparisons between home market and U.S. prices inappropriate for purposes of determining whether to initiate the antidumping investigations on durum wheat and hard red spring wheat. In the course of these investigations, the Department will examine further the issue of particular market situation and, if necessary, the proper comparison market to be examined in each investigation.

While asserting the existence of a particular market situation which renders price comparisons between home market and U.S. prices

[3] The petitioners excluded seed wheats from the U.S. price calculation. These wheats are classified by the HTSUS subheadings: 1001.90.10.00 and 1001.10.00.10. In addition they excluded a broader HTSUS category which includes other non-hard red spring wheats (*i.e.,* 1001.90.20.96).

inappropriate, the petitioners have, as a possible alternative, provided EP to home market price comparisons.

Price-to-Price Comparisons Based on Home Market Prices

For durum wheat, the petitioners based NV on average monthly domestic prices of the CWB's sales of #1 milling grade Canadian western amber durum. For hard red spring wheat, the petitioners based NV on average monthly domestic prices of the CWB's sales of milling grade #1 Canadian western red spring, 14 percent protein. These prices were derived from a publicly available source on the internet. The home market prices were then converted from Canadian dollars to U.S. dollars and compared to U.S. AUVs.

Based on EP to home market price comparisons, the petitioners calculated dumping margins for durum wheat ranging from 3.2 to 23.2 percent, with a weighted-average margin of 13.3 percent. The petitioners calculated dumping margins for hard red spring wheat ranging from 0 to 25.6 percent, with a weighted-average margin of 7.6 percent.

Price-to-Price Comparisons Based on Third Country Prices

The petitioners calculated NV based on AUVs of Japanese imports of the subject merchandise from Canada. The AUVs were obtained from the Japanese Customs Agency's Web site, *http://www.customs.go.jp.* Since the AUVs reported by the Japanese Customs Agency were reported in yen per metric ton, the petitioners converted the prices from yen to U.S. dollars by applying the average POI exchange rate found at *http://ia.ita.doc.gov/exchange/Japan.txt.* After converting the Japanese prices to U.S. dollars per metric ton, the petitioners subtracted amounts for insurance and freight. Freight rates were obtained from the USDA's *Grain Transportation Prospects* and from discussions with an official at the USDA. A quote for insurance rates was obtained from an insurance company, Marsh, Inc. The net Japanese AUVs were then compared to U.S. AUVs.

Based on EP to third country price comparisons, the petitioners calculated dumping margins for durum wheat ranging from 26.5 to 48.2 percent, with a weighted-average margin of 40.2 percent. The petitioners calculated dumping margins for hard red spring wheat ranging from 18.2 to 86.6 percent, with a weighted-average margin of 44.8 percent.

Price-to-CV Comparisons

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV on CV. In accordance with section 773(e) of the Act, the petitioners calculated CV as the cost of manufacture (''COM''), selling, general and administrative (''SG&A'') expenses and profit. To calculate COM, the petitioners based direct expenses and depreciation expenses on publicly available data.

1. Durum Wheat

We revised the petitioners' calculation of COM for Alberta by applying yields that were from the same public source as the production expenses for that province. For Saskatchewan, we revised the COM by applying calculated, weighted-average yields by soil type based on additional, publicly available information. To calculate SG&A, the petitioners relied upon amounts reported in the CWB's 2001 annual report. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon publicly available data.

Comparing EP to the adjusted CV, we found no additional evidence to support the petitioners' claim that durum wheat from Canada is being dumped in the United States.

2. Hard Red Spring Wheat

To calculate COM, the petitioners based direct expenses and depreciation expenses on publicly available data. We revised the petitioners' calculation of COM for Alberta by applying yields that were from the same public source as the production expenses for that province. For Saskatchewan, we revised COM by applying calculated, weighted-average yields by soil type based on additional, publicly available information. To calculate SG&A, the petitioners relied upon amounts reported in the CWB's 2001 annual report. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon publicly available data.

Based on a comparison of EP to the adjusted CV, we calculated a margin of 13.26 percent for hard red spring wheat.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that each industry's injured condition is evident in the declining trends in domestic prices, production volume and value, market share, income and wages, net sales volume and value, and, for durum wheat, the increasing U.S. inventory levels. The petitioners further allege threat of injury due to increased import volumes and import penetration, because of excess production capacity in Canada, and because inventory levels in Canada exceed its demand for wheat. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, reports from the ITC and United States Department of Agriculture, statistics compiled by the Canadian Wheat Board and *Statistics Canada,* as well as independent academic and economic studies.

We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on durum wheat and hard red spring wheat from Canada, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(c)(1) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than November 18, 2002, whether there is a reasonable indication that imports of durum and hard red spring wheat from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27514 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–846 and C–122–848]

Notice of Initiation of Countervailing Duty Investigations: Durum Wheat and Hard Red Spring Wheat From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of countervailing duty investigations.

SUMMARY: The Department of Commerce is initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of durum wheat and hard red spring wheat from Canada receive countervailable subsidies.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Craig W. Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1778.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are references to the provisions codified at 19 CFR part 351 (April 2002).

The Petitions

On September 13, 2002, the Department received petitions filed in proper form by the North Dakota Wheat Commission (hard red spring wheat), Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat) (collectively, ''the petitioners'').[1] The Department received petition supplements from September 24 through October 21, 2002.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of durum wheat and hard red spring wheat, the subject merchandise, from Canada receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the respective domestic industries because they are interested parties as defined in sections 771(9)(E) and (F) of the Act and they have demonstrated sufficient industry support with respect to each of the countervailing duty investigations that they are requesting the Department to initiate. *See infra,* ''Determination of Industry Support for the Petitions.''

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is typically classified in the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is typically classified in the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96.

Although the HTSUS subheadings provided for durum wheat and hard red spring wheat are for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Parties should submit any comments on the file of each (durum wheat and hard red spring wheat) case. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada (''GOC'') for consultations with respect to the petitions filed in these proceedings. The Department held consultations with the GOC on October 1, 2002. The points raised in the consultations are cited in the Memorandum to the File, ''CVD Consultations with Officials from the Government of Canada,'' dated October 2, 2001, which is on file in the Department's Central Records Unit,

[1] In the September 13, 2002 petitions, the petitioners identified the North Dakota Wheat Commission as a petitioner for both the durum wheat and hard red spring wheat petitions. However, in a petition supplement dated September 24, 2002, the petitioners informed the Department that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

Room B–099 of the main Department of Commerce building (''CRU'').

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of an investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like products referred to in these petitions are the domestic like products defined in the *Scope of Investigations* section, above. Based upon our review of the petitioners' claims, we have accepted the petitioners' definitions of the domestic like products. For further discussion, *see* October 23, 2002 Memorandum from Team to Richard W. Moreland, ''Domestic Like Product and Industry Support'' (''*Like Product/Industry Support Memo*''), which is on file in the CRU.

On October 3, 2002, the Department extended the deadline for the initiation determinations to no later than October 23, 2002 in order to establish whether the petitions are supported by the respective domestic industries, pursuant to section 702(c)(1)(B) of the Act. *See* October 3, 2002 Memorandum to Faryar Shirzad from Richard W. Moreland, ''Extension of Deadline for Determining Industry Support.'' The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support. *See* October 23, 2002 Import Administration AD/CVD Enforcement Initiation Checklist (''*Initiation Checklist*'') and *Like Product/Industry Support Memo,* both of which are on file in the CRU.

We determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like products. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like products, and the requirements of section 702(c)(4)(A)(i) of the Act are met. The Department received no opposition to the petitions. Accordingly, we determine that these petitions are filed on behalf of the respective domestic industries within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of subject merchandise. The petitioners contend that each industry's injured condition is evident in the declining trends in domestic prices, production volume and value, market share, income and wages, net sales volume and value, and, for durum wheat, increasing U.S. inventory levels. The petitioners further allege threat of injury due to increased import volumes and import penetration, excess production capacity in Canada, and because inventory levels in Canada exceed its demand for wheat. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, reports from the ITC and United States Department of Agriculture, statistics compiled by the Canadian Wheat Board (''CWB'') and Statistics Canada, as well as independent academic and economic studies.

We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on durum wheat and hard red spring wheat from Canada and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain durum wheat and hard red spring wheat from Canada receive countervailable subsidies.

We are including in our investigations the following programs alleged in the petitions to have provided a countervailable subsidy to the CWB:

1. Railcar Lease Subsidy
2. Provision of Government-owned Railcars
3. Rail Freight Revenue Cap Subsidy
4. Maintenance of Uneconomic Branch Lines and Short Line Subsidies

[2] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

5. Government Guarantee of Borrowing and Lending

A discussion of evidence supporting our initiation determination on these programs is contained in the *Initiation Checklist*.

At this time, we are not including in our investigations of certain durum wheat and hard red spring wheat the following programs alleged to benefit producers and exporters of the subject merchandise in Canada:

1. Railcar Allocation Subsidy

The petitioners allege that the GOC has given the CWB the power to allocate railcars for the transportation of its grain, thereby eliminating the risk premium that grain companies would otherwise charge to cover the impact of competing with non-Board users for railcars. The petitioners assert that this railcar allocation subsidy is a financial contribution because the railroads are providing their transportation services at less than adequate remuneration.

However, the petitioners have not identified the financial contribution being made (directly or indirectly) by the government. In the petitions, the petitioners state that the allocation authority granted to the CWB ''is a financial contribution in the form of the provision of a service at less than adequate remuneration.'' However, the GOC is not providing rail service. Instead, this service is provided by the private railway companies.

Instead, it appears that the GOC has bestowed on the CWB certain authority with respect to the transportation of CWB grains. This authority originates in the CWB Act, which states that ''no person other than the Corporation [Board] shall transport or cause to be transported from one province wheat or products owned by a person other than the Board,'' and is further addressed in a June 2000 memorandum of understanding (''MOU'') between the GOC and the CWB.

The MOU, refers to the CWB's railcar allocation power and states, inter alia, that the authority will be used only with respect to the grain that the CWB markets. Also, in describing this provision in the MOU, the petitioners have characterized this provision as permitting the CWB to negotiate car supply requirements with the railways.

Although we do not have a clear understanding of what the CWB's authority is with respect to the allocation of railcars, the information provided by the petitioners appears to indicate that CWB negotiates the number of cars it will receive with the railways and that its allocation authority pertains only to cars for the grains it markets, so that it is not allocating cars away from non-Board users.

Therefore, because the petitioners have not identified a financial contribution or a benefit, we recommend not including this alleged subsidy in our investigation.

2. Shipper of Record

The petitioners allege that in November 2000 the CWB declared itself the ''shipper of record,'' enabling the CWB to receive multi-car discounts on freight movement, instead of the grain companies. The petitioners allege that the GOC accorded the right to the CWB to act as the ''shipper of record'' and, therefore, transferred the right to claim such discounts from the grain companies to the CWB.

The petitioners have not identified the financial contribution being made (directly or indirectly) by the government. As with the allegation regarding railcar allocation, the petitioners point to authority granted to the CWB, which allows it to declare itself shipper of record. According to the petitioners, this results in the CWB being able to negotiate multi-car discounts with the railways, discounts that would otherwise be paid to the grain companies. If these discounts are the financial contribution, then they appear to be bestowed by the railways.

Therefore, because the petitioners have not identified a financial contribution, we recommend not including this alleged subsidy in our investigation.

3. Noncommercial Provision of Forward Contracts

The petitioners allege that, by establishing the CWB as the only legal purchaser of western Canadian wheat and by guaranteeing CWB's initial payments to producers, the GOC has removed all acquisition risks from the CWB. Accordingly, in the absence of such risk, the CWB is able to provide forward contracts to U.S. buyers at a lower price. The petitioners allege that the financial contribution ''is in the form of a government guarantee (which is equivalent to the cost of insurance that a private firm would have to pay to replicate the CWB's risk position) and the value of the CWB's monopsony status.''

The petitioners have not provided sufficient evidence to support its contention that the GOC provided a financial contribution in the form of a guarantee that benefits the CWB. Additionally, the petitioners have not explained how the GOC grant of monoposony status to the CWB falls within the definitions of a ''financial contribution'' enumerated in section 771(5)(D) of the Act. Therefore, we recommend not investigating this alleged subsidy.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public versions of the petitions have been provided to the GOC. We will attempt to provide a copy of the public versions of the petitions to each exporter named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than November 18, 2002, whether there is a reasonable indication that imports of durum and/or hard red spring wheat are causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination will result in the investigation(s) being terminated; otherwise, the investigation(s) will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27515 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government-owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of

Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

[Docket No.: 96–012US]

Title: A Device for Spatially-Resolved, High-Sensitivity Measurement of Optical Absorption Based on Intra-Cavity Total Reflection.

Abstract: An optical cavity resonator device is provided for conducting sensitive measurement of optical absorption by matter in any state with diffraction-limited spatial resolution through utilization of total internal reflection within a high-Q (high quality, low loss) optical cavity. Intracavity total reflection generates an evanescent wave that decays exponentially in space at a point external to the cavity, thereby providing a localized region where absorbing materials can be sensitively probed through alteration of the Q-factor of the otherwise isolated cavity. When a laser pulse is injected into the cavity and passes through the evanescent state, an amplitude loss resulting from absorption is incurred that reduces the lifetime of the pulse in the cavity. By monitoring the decay of the injected pulse, the absorption coefficient of manner within the evanescent wave region is accurately obtained from the decay time measurement.

[Docket No.: 96–025CIP]

Title: Intra-Cavity Total Reflection For High Sensitivity Measurement Of Optical Properties.

Abstract: An optical cavity resonator device is provided for conducting sensitive measurement of optical absorption by matter in any state with diffraction-limited spatial resolution through utilization of total internal reflection within a high-Q (high quality, low loss) optical cavity. Intracavity total reflection generates an evanescent wave that decays exponentially in space at a point external to the cavity, thereby providing a localized region where absorbing materials can be sensitively probed through alteration of the Q-factor of the otherwise isolated cavity. When a laser pulse is injected into the cavity and passes through the evanescent state, an amplitude loss resulting from absorption is incurred that reduces the lifetime of the pulse in the cavity. By monitoring the decay of the injected pulse, the absorption coefficient of manner within the evanescent wave region is accurately obtained from the decay time measurement.

[Docket No.: 96–025US]

Title: Broadband, Ultrahigh-Sensitivity Chemical Sensor Based on Intra-Cavity Total Reflection.

Abstract: A broadband, ultrahigh-sensitivity chemical sensor is provided that allows detection through utilization of a small, extremely low-loss, monolithic optical cavity. The cavity is fabricated from highly transparent optical material in the shape of a regular polygon with one or more convex facets to form a stable resonator for ray trajectories sustained by total internal reflection. Optical radiation enters and exits the monolithic cavity by photon tunneling in which two totally reflecting surfaces are brought into close proximity. In the presence of absorbing material, the loss per pass in increased since the evanescent waves that exist exterior to the cavity at points where the circulating pulse is totally reflected, are absorbed. The decay rate of an injected pulse is determined by coupling out an infinitesimal fraction of the pulse to produce an intensity-versus-time decay curve. Since the change in the decay rate resulting from absorption is inversely proportional to the magnitude of absorption, a quantitative sensor of concentration or absorption cross-section with 1 part-per-million/pass or better sensitivity is obtained. The broadband nature of total internal reflection permits a single device to be used over a broad wavelength range. The absorption spectrum of the surrounding medium can thereby be obtained as a measurement of inverse decay time as a function of wavelength.

Dated: October 21, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–27421 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102E]

Fisheries off West Coast States and in the Western Pacific; Reopening of the Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of the comment period.

SUMMARY: NMFS reopens the public comment period on the Draft Programmatic Environmental Impact Statement (DPEIS) for Pacific Salmon Fisheries Management off the Coasts of Southeast Alaska, Washington, Oregon, and California, and in the Columbia River Basin.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Comments on this action should be sent to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, N.E., BIN c157000–Bldg 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Peter Dygert, Sustainable Fisheries Division, Northwest Region, NMFS, 206–526–6734.

SUPPLEMENTARY INFORMATION: The notice of availability of the DPEIS was published by the Environmental Protection Agency (EPA) in the **Federal Register** on August 23, 2002 (67 FR 54649). Comments were requested by October 22, 2002. On October 18, 2002, NMFS received a request from EPA Region 10 to reopen the comment period on the DPEIS. This document announces the reopening of the comment period.

Dated: October 23, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27508 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on November 12–15, 2002.

ADDRESSES: These meetings will be held at the Westin Beach Resort, 97000 South Overseas Highway, Key Largo, FL 33037; telephone: 305–852–5553.

*Council address:*Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

November 14

8:30 a.m.—Convene.

8:45 a.m.zn–9 a.m.—Appointment of Committee Members

9 a.m.–9:15 a.m.—Election of Vice Chairman

9:15 a.m.–;11:30 a.m.—Receive public testimony on the Secretarial Reef Fish Amendment 2.

1 p.m.–4 p.m.—Receive the report of the Habitat Protection Committee.

4 p.m.–5 p.m.—Receive the report of the Shrimp Management Committee.

November 15

8:30 a.m.–11 a.m.—Receive the report of the Reef Fish Management Committee.

11 a.m.–11:30 a.m.—Receive the report of the Joint Reef Fish and Artificial Reef Committees.

11:30 a.m. - 11:40 a.m. -Receive the International Commission for the Conservation of Atlantic Tunas Meeting report.

11:40 a.m.–11:50 a.m.–Receive Enforcement Reports.

11:50 a.m.–12 noon—Receive the NMFS Regional Administrator's Report.

12 noon–12:15 p.m.—Receive Director's Reports.

12:15 p.m.–12:30 p.m.—Other Business.

Committees

November 12, 2002

8:30 a.m.–12:30 p.m.—Convene the Habitat Protection Committee to review and comment on the Draft Environmental Impact Statement (DEIS) for the Essential Fish Habitat (EFH) Generic Amendment. The committee will also consider the recommendations of Technical and User Review Panels, Habitat Protection Advisory Panels (APs) and the Scientific and Statistical Committee (SSC). The Council will take final action on the DEIS in January 2003 and file the DEIS with the Environmental Protection Agency (EPA).

2 p.m.–5:30 p.m.—Convene the Reef Fish Management Committee to make its final recommendations to the Council on Secretarial Reef Fish Amendment 2 for amberjack. The amendment contains a rebuilding program for greater amberjack, which is largely based on actions previously taken by the Council in 2000 and 2001 for reducing the recreational bag limits to 1 fish and implementing a 3–month commercial closure. The committee will review new stock assessments on red and yellowedge grouper, but will defer taking action on this information to the January 2003 meeting. The committee will review comments from scoping meetings on Reef Fish Amendment 21 related to extending the duration of rules establishing the Madison/Swanson and Steamboat Lumps marine reserves. The Council will take final action on this amendment in May 2003. The committee will also review a draft red snapper individual fishing quota profile and recommend changes to the Council. The profile when completed will be submitted by NMFS to fishermen for comments in a referendum conducted by NMFS. The committee will discuss with enforcement officials possible causes of violations of the reef fish bottom longline prohibited area in the western Gulf and potential remedies.

November 13, 2002

8:30 a.m.–9:30 a.m—Convene a joint meeting of the Reef Fish Management and Artificial Reef Committees to consider whether the Council should consider holding workshops to discuss establishing special management zones (SMZs) off Alabama where the number of hooks fished per line may be limited. If approved, these workshops will be scheduled in 2003.

9:30 a.m.–11:30 a.m.—Convene the Shrimp Management Committee to review scoping comments on an options paper that eventually will become Shrimp Amendment 13. The draft amendment will address adding rock shrimp to the fishery management plan, alternatives to improve bycatch estimates, alternatives for reducing bycatch, the need for Vessel Monitoring Systems, and alternatives that could reduce effort.

11:45 a.m.–6 p.m.—Council members will visit the U.S. Coast Guard air station and bases in the Miami area for an orientation and training session.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 4, 2002.

Dated: October 24, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27510 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093002C]

Endangered Species; File No. 1245

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that J. David Whitaker has been issued a modification to scientific research Permit No. 1245.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 27, 2001, notice was published in the **Federal Register** (66 FR 49353) that a modification of Permit No. 1245, issued May 19, 2000 (65 FR 36666), had been requested by the above-named individual. A second modification request was published in the **Federal Register** on August 6, 2002 (67 FR 50874). The requested modifications were granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modifications extend the permit for an additional two years and increases non-lethal take of loggerhead sea turtles from 250 to 300 and leatherbacks from 1 to 3.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 23, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27509 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030602C]

Marine Mammals; File No. 1009–1640

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Jerome Siegel, Neurobiology Research 151A3, 16111 Plummer St., VA GLAHS-Sepulveda, North Hills, CA 91343, has applied in due form for a permit to import tissue samples from bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), common dolphins (*Delphinus delphis*), beluga whales (*Delphinapterus leucas*), and Northern fur seals (*Callorhinus ursinus*) from Russia, and to analyze tissue samples from captive killer whales (*Orcinus orca*) and bottlenose dolphins in the U.S. for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before November 29, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes three projects. The first is to investigate the anatomy and immunohistology of several structures of cetacean brains. Three bottlenose dolphin, three harbor porpoise, two common dolphin, and two beluga whale brains will be imported from Russia. Brains will be collected from animals killed during subsistence harvest or that died in fishing nets, and from dead animals stranded on shore. No animals will be deliberately killed to fulfill samples for this project. The second project involves the study of sleep in fur seals. Six seals will be caught on the Bering Island in Russia, temporarily held in captivity, implanted for polygraphic sleep studies, and euthanized. Microdialysis samples and brains of the six fur seals will be imported for anatomical studies. The third study involves the determination of hormonal and peptidergic properties of the extended waking behavior in mothers and calves of killer whales and bottlenose dolphins. Blood and urine samples from six U.S. captive killer whale mother/calf pairs and three bottlenose dolphin mother/calf pairs will be analyzed for hormone concentrations. Four bottlenose dolphins will be collected from the Black Sea in Russia, held in temporary captivity, administered hormones, and blood samples from these animals will be imported for this study. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 23, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27507 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

October 23, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 2002

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 67 FR 65178, published on December 18, 2001). Also see 66 FR 63029, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on October 29, 2002, you are directed to adjust the current limits for the following categories, as provided for in the Memorandum of Understanding between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997:

Category	Adjusted twelve-month limit [1]
433	26,423 dozen.
448	63,539 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[Doc. 02–27447 Filed 10–28– 02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man–Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

October 23, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for swing and carryforward. The limit for Category 317 is being reduced for swing being subtracted.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63038, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 29, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
317	51,134,770 square meters.
334/634	437,793 dozen.
335/635	255,507 dozen.
336/636	343,747 dozen.
338/339	1,047,479 dozen of which not more than 657,999 dozen shall be in Categories 338–S/339–S [2].
341/641	532,548 dozen.
342/642	423,079 dozen.
351/651	288,731 dozen.
647/648	568,509 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–27446 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 1, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27600 Filed 10–25–02; 2:43 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 29, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27601 Filed 10–25–02; 2:43 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 22, 2002.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27602 Filed 10–25–02; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

SUNSHINE ACT MEETING

TIME AND DATE: 11 a.m., Friday, November 15, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27603 Filed 10–25–02; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 8, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance mattters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27604 Filed 10–25–02; 2:45 pm]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Collection of Information for Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of children's sleepwear. This collection of information is in the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 and regulations implementing those standards. *See* 16 CFR parts 1615 and 1616. The children's sleepwear standards and implementing regulations establish requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear.

The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive written comments not later than December 30, 2002.

ADDRESSES: Written comments should be captioned ''Children's Sleepwear, Collection of Information'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR parts 1615 and 1616, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION:

A. The Standards

Children's sleepwear in sizes 0 through 6X manufactured for sale in or imported into the United States is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR part 1615). Children's sleepwear in sizes 7 through 14 is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR part 1616). The children's sleepwear flammability standards require that fabrics, seams, and trim used in children's sleepwear in sizes 0 through 14 must self-extinguish when exposed to a small open-flame ignition source. The children's sleepwear standards and implementing regulations also require manufacturers and importers of children's sleepwear in sizes 0 through 14 to perform testing of products and to maintain records of the results of that testing. 16 CFR part 1615, subpart B; 16 CFR part 1616; subpart B. The Commission uses the information compiled and maintained by manufacturers and importers of children's sleepwear to help protect the public from risks of death or burn injuries associated with children's sleepwear. More specifically, the Commission reviews this information to determine whether the products produced and imported by the firms comply with the applicable standard. Additionally, the Commission uses this information to arrange corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the children's sleepwear standards and implementing regulations under control number 3041–0027. OMB's most recent extension of approval will expire on January 31, 2003. The Commission proposes to request an extension of approval without change for the collection of information in the children's sleepwear standards and implementing regulations.

B. Estimated Burden

The Commission staff estimates that about 53 firms manufacture or import products subject to the two children's sleepwear flammability standards. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 6,000 hours on each of those firms. That burden will result from conducting the testing required by the standards and maintaining records of the results of that testing required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of children's sleepwear will be about 318,000 hours. The hourly wage for the testing and recordkeeping required by the standards and regulations is about $30.03, for an annual cost to the industry of about $9,550,000.

The Commission will expend approximately three months of professional staff time annually for examination of information in the records maintained by manufacturers and importers of children's sleepwear subject to the standards. The annual cost to the Federal government of the collection of information in the sleepwear standards and implementing regulations is estimated to be $22,500.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 22, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–27414 Filed 10–28–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 21, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Introductions; Approve October Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Conflict of Interest
- Water Policy Box
- SSAB Chairs' Meeting in Oak Ridge, TN (Oct 17–19)

8:30 p.m.—Public Comments and Questions
8:40 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

9:10 p.m.—Administrative Issues
- October Chairs' Meeting
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on October 23, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27441 Filed 10–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463,86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: November 21, 2002, 8:30 AM to 12:30 PM.

ADDRESSES: Hamilton Crowne Plaza Hotel, 14th & K Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586-3867.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

- Call to order by Mr. Wes Taylor, Chairman.
- Other Council business.
- Panel on Energy and Economy of the Future:

Mr. Des C. Reloj, Jr., Executive Director Energy Security
Initiatives, Inc., will discuss coal's value in a methane-based economy.
Dr. Edward D. Rubin, Carnegie-Mellon University, will discuss coal's role in a hydrogen-based economy and associate carbon management opportunities.

- Remarks by Secretary of Energy, Spencer Abraham.
- Presentation by Mr. Terry Ackman, National Energy Technology Laboratory on mine safety and mine mapping.
- Panel on Mercury Emissions Control:

Mr. Tom Feeley, National Energy Technology Center
Dr. W. Randall Seeker, GE International
Mr. Frank Alix, CEO, Powerspan Corporation
Mr. Michael Horvath, FirstEnergy Corporation
Mr. James Butz, Vice President Operations, ADA Technologies

- Discussion of other business properly brought before the Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 23, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee , Management Officer.

[FR Doc. 02–27440 Filed 10–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–020]

Standards For Business Practices of Interstate Natural Gas Pipelines

October 23, 2002.

In the matter of: RP02–492–001, RP02–414–001, RP02–454–001, RP02–474–001, RP02–475–001, RP02–461–001, RP02–423–002, RP02–456–002, RP02–493–001, RP02–449–001, RP02–491–001, RP02–464–001, RP02–431–001, RP02–490–001, RP02–476–001, RP02–478–002, RP02–467–001, P02–473–001, RP02–457–001, RP02–484–001, RP02–451–001, RP02–435–001, PG&E Gas Transmission, RP02–455–001, RP02–462–001, RP02–432–001, RP02–494–001, RP02–471–001, RP02–443–001 and RP02–479–002, (Not Consolidated); Algonquin Gas Transmission Company, Alliance Pipeline L.P., Black Marlin Pipeline Company, Columbia Gas Transmission Company, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Dauphin Island Gathering Company, Discovery Gas Transmission LLC, East Tennessee Natural Gas Company, Eastern Shore Natural Gas Company, Egan Hub Partners, L.P., Granite State Gas Transmission, Inc., Gulf States Transmission Corporation, Gulfstream Natural Gas System, Iroquois Gas Transmission System LP, Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline, LLC, Nautilus Pipeline Company, North Baja Pipeline, LLC, Northern Border Pipeline Company, Northern Natural Gas Company, Petal Gas Storage, L.L.C., PG&E Gas Transmission, Northwest Corporation, Southern Natural Gas Company, Southern LNG Inc., Texas Eastern Transmission, LP, Tuscarora Gas Transmission Company, USG Pipeline Company, and Vector Pipeline L.P., Notice of Compliance Filing.

Take notice that the above-referenced pipelines made filings to comply with the Commission's orders in the above-captioned docket nos. These revised tariff sheets are to be effective October 1, 2002. These filings address compliance with Order 587-O.[1]

In Order No. 587-O, the Commission required pipelines to file revised tariff sheets to comply with Version 1.5 of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. The Commission directed that pipelines implement these standards by filing revised tariff sheets no later than August 1, 2002, to become effective October 1, 2002 implementation date required by Order No. 587-O.

The Commission issued orders in each of the captioned dockets on the pipelines initial filings to comply with Order No. 587-O. Each of the pipelines has filed to comply with the applicable Commission's order.

Any person desiring to protest in a proceeding must file a separate protest in each docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 30, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS''

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles, 31,129 (May 1, 2002).

link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27459 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–30–000]

Algonquin LNG, Inc. and Algonquin ALNG, LP; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 17, 2002, Algonquin LNG, Inc. (ALNG) and Algonquin LNG, LP (ALNG LP) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to reflect a corporate name change to become effective October 17, 2002.

ALNG and ALNG LP state that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27468 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–31–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

October 22, 2002.

Take notice that on October 17, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 247, with an effective date of November 1, 2002.

Alliance states that the filing is being made to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of the two-year waiver period established in Order No. 637.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27469 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–196–003]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

October 23, 2002.

Take notice that on October 18, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets included in this filing as Appendix A to the filing, to be effective on December 1, 2002.

CEGT states that the purpose of this filing is to comply with the Commission's order issued September 23, 2002 in Docket No. RP02-196–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27461 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–29–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 17, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 461, to be effective November 17, 2002.

CEGT states that the purpose of this filing is to submit a non-conforming service agreement along with revised tariff sheet to reference such agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27467 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–088]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

October 23, 2002.

Take notice that on October 18, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002:

Original Sheet No. 656
Original Sheet No. 657
Original Sheet No. 658
Sheet Nos. 659–699 [reserved]

CEGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27475 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–475–002, RP96–129–017 and RP00–609–003]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

October 23, 2002.

Take notice that on October 18, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing proposed to be effective November 1, 2002.

Trunkline asserts that the purpose of this filing is to implement the terms of the February 21, 2002 Stipulation and Agreement in Docket Nos. RP00–475–000, RP96–129–000, RP00–609–000 and RP00–609–001 (Settlement). The Settlement was approved, as modified, by the Commission's July 5, 2002 Order on Trunkline's Order No. 637 Settlement, 100 FERC ¶ 61,048 (2002), in the above referenced proceedings.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27460 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–23–000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

October 21, 2002.

Take notice that on October 15, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 280; Ninth Revised Sheet No. 281; Seventh Revised Sheet No. 351; Sixth Revised Sheet No. 355; Second Revised Sheet No. 357; Seventh Revised Sheet No. 575; and Fifth Revised Sheet No. 581, effective November 15, 2002.

Columbia states that the filing is being made to incorporate into its tariff the Commission's recent pronouncements in Tenaska Marketing Ventures v. Northern Border Pipeline Company, 99 FERC ¶ 61,182 (2002), and provide for limited situations in which a replacement shipper's service agreement may be terminated where the associated primary contract (*i.e.*, the releasing shipper's contract) has been terminated.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27465 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–541–003, RP03–28–000]

Cotton Valley Compression, L.L.C.; Notice of Compressor Change Tariff, Rate, and Environmental Filing

October 22, 2002.

Take notice that on October 16, 2002, Cotton Valley Compression, L.L.C. (Cotton Valley), filed in Docket Nos. CP99–541–003 and RP03-28–000 a report (1) describing the first change of leased compressor units, (2) recomputing the stated rates to reflect the cost and capacity impacts of that compressor change, (3) replacing specific tariff sheets to reflect those revised rates, and (4) satisfying environmental conditions attached to its original certificate of public convenience and necessity issued in 2000. 90 FERC ¶ 61,206.

In that certificate besides authorizing Cotton Valley's 1,200 horsepower of installed leased compression with a capacity of 13,100 Dth/d, the Commission authorized it to operate leased compressors up to 3,000 horsepower with a capacity of up to 31,000 Dth/d, without further certification or abandonment for changes up or down within this upper level, subject to certain conditions.

In pertinent part Cotton Valley reports that: (1) it replaced the 600 horsepower Waukesha Dresser unit with a single 1,350 horsepower CAT 3516, with 1,950 horsepower of combined compression and a maximum firm capacity of 17,800 Dth/day; (2) it certifies that, with the new leased compressor configuration described above, the previously determined acceptable air emission level of less than 100 TPY combined has not been exceeded; (3) it shows that the 1999 compressor noise reading of Ldn of 46 dBA at the nearby noise sensitive areas (NSA) for the original 1,200 hp three-unit configuration has been reduced to an Ldn of 40.5 dBA at the NSA; (4) it both computes new rates and revises tariff sheets to reflect revised FT base reservation rate which drops from $0.86 to $0.6406 per Dth per month, and the revised FT deferred compressor surcharge which increases from $0.9258 to $1.354 per Dth per month, with comparable IT rate revisions.

The following revised tariff sheets are being filed:

First Revised Sheet No. 2 superceding Original Sheet No. 2
First Revised Sheet No. 4 superceding Original Sheet No. 2

Cotton Valley requests that these sheets be made effective on November 15, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27451 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2002.

Take notice that on October 18, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet

No. 9, and Eighth Revised Sheet No. 10, to become effective October 1, 2002.

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and the termination of two contracts.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27474 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–554–001]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

October 22, 2002.

Take notice that on October 15, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with a proposed effective date of October 1, 2002.

ESNG received an order in RP02–535–000 on October 1, 2002 that rejected the tariff sheets filed in its September 6, 2002 storage tracker filing. The tariff sheets were filed to revise ESNG's rates under Rate Schedule CFSS in order to track rate changes submitted by Columbia Gas Transmission Corporation (Columbia) on August 30, 2002, in Docket No. RP02–526–000. Columbia's tariff sheets were rejected by a Commission Letter Order issued September 26, 2002. Subsequently, ESNG's tariff sheets were rejected as moot. In this filing ESNG is requesting that tariff sheets originally filed on September 24, 2002 in Docket No. RP02–554–000 be withdrawn and substitute tariff sheets are being filed (in the same docket) which track the original changes in Transcontinental Gas Pipe Line Corporation (Transco) storage rates but also include corrected rates proposed to be changed under Rate Schedule CFSS from the filing made on September 6, 2002.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27463 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–1–000]

El Paso Pipeline Company; Notice of Site Visit

October 23, 2002.

Beginning on Tuesday, November 5, 2002, and ending on Thursday, November 8, 2002, the Federal Energy Regulatory Commission staff will conduct a limited site visit of the existing and proposed compressor station locations where El Paso Natural Gas Company (El Paso) proposes to construct and operate facilities for the Power Up Project.

On November 5, we will visit the proposed Wink and Black River Compressor Station sites and the existing Cornudas Compressor Station, in that order. We will meet at 8 AM at the following location near the proposed Wink Compressor Station: ALCO Discount Store 308 E. U.S. Highway 302 Kermit, Texas 79475. *El Paso contact for directions*: Jeff Blake, (713) 594–9122.

On November 6, we will meet at 8 AM at the existing El Paso Compressor Station. We will visit the existing El Paso, Florida, and Lordsburg Compressor Stations, in that order. The address for this location is: El Paso Compressor Station, 12600 McCombs St. El Paso, Texas 79934. *El Paso contact for directions*: Keith Udhe, (915) 821–8081.

On November 7, we will visit the proposed Cimarron and Tom Mix Compressor Station sites and the existing Casa Grande Compressor Station, in that order. We will meet at 8 AM at the following location near the proposed Cimarron Compressor Station: Best Western Plaza Inn (I–10 Exit 340), 1100 W. Rex Allen Dr., Willcox, Arizona. *El Paso contact for directions*: Sheila Castellano, (719) 510–3516.

Please contact El Paso for directions to the identified compressor stations. For further information, call the Office of External Affairs, at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27449 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–26–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Tariff Filing

October 21, 2002.

Take notice that on October 16, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 2; First Revised Sheet No. 190; Original Sheet No. 190A; and First Revised Sheet No. 191, to become effective November 16, 2002.

Gulfstream states that the purpose of this filing is to revise the capacity release provisions in Section 26 of the General Terms and Conditions with the addition of a new Section 26.6, which sets forth its right to terminate temporary capacity releases by shippers who are not creditworthy or who have become non-creditworthy and also clarifies that it may notify releasing shippers and suspend or terminate the capacity release if the replacement shippers are not creditworthy or have become non-creditworthy, thus reverting the capacity back to the releasing shippers.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27466 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–422–003]

Kern River Gas Transmission Company; Notice of Application To Amend Certificate of Public Convenience and Necessity

Issued: October 23, 2002.

On October 15, 2002, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed an application in Docket No. CP01–422–003 pursuant to Section 7c of the Natural Gas Act (NGA) and Subpart A of Part 157 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), for an amended certificate of public convenience and necessity authorizing Kern River to install and operate modified compressor facilities for its 2003 Expansion Project, for which an Order Denying Rehearing and Issuing Certificate (Order) was issued on July 17, 2002 in Docket No. CP01–422–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 502–8659.

Kern River states that the Order authorized Kern River to construct and operate additional facilities needed to expand its transportation capacity from Opal, Wyoming to delivery points primarily in California. At its existing Muddy Creek Compressor Station, located in Lincoln County, Wyoming, Kern River states that it was authorized to install two additional Solar Mars 100 SoLoNox turbine-driven centrifugal compressor units (15,000 ISO horsepower each) and to upgrade an existing Solar Mars 100 compressor unit that is currently derated to a Mars 90 equivalent with 13,000 ISO horsepower. According to Kern River, upgrading the existing unit to the full 15,000 ISO horsepower rating of a Mars 100 compressor unit was to have been accomplished through control software changes.

Instead of upgrading the existing derated unit, Kern River states that it is now proposing to replace it with a different Mars 100 compressor unit equipped with an Augmented Backside Cooled (ABC) combustor liner that is expected by its manufacturer, Solar Turbine

Inc. (Solar), to significantly reduce pollutant emissions. The replacement compressor unit would be installed as part of a Solar research and development project and would be provided at no additional cost to Kern River. The replacement unit would have exactly the same horsepower as the derated unit would have had after being upgraded as part of the Kern River 2003 expansion project.

Kern River states that it is requesting authorization by no later than January 1, 2003, so that the proposed modification may be incorporated into Kern River's 2003 Expansion Project, which is scheduled to be completed and in-service by May 1, 2003.

Any questions regarding this application may be directed to Billie L. Tolman, Manager, Tariffs & Certificates, Kern River Gas Transmission Company, P. O. Box 582000, Salt Lake City, Utah 84158-2000, at (801) 584–6976.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 13, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the

Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and instructions on Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27409 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–34–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2002.

Take notice that on October 18, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002.

First Revised Ninth Revised Sheet No. 5
Fourth Revised Sheet No. 5-A
Third Revised Sheet No. 140
Fourth Revised Sheet No. 144
Third Revised Sheet No. 145
Third Revised Sheet No. 161
Third Revised Sheet No. 822
Third Revised Sheet No. 823
Third Revised Sheet No. 839

Kern River states that the purpose of this filing is to revise Kern River's tariff to reflect the expiration of the temporary waiver of the rate ceiling on short-term capacity release transactions.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27472 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–362–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

October 22, 2002.

Take notice that on October 15, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing tariff sheets to modify the Tariff mechanism that allows the pipeline to enter into pre-arranged capacity sales with its shippers. GTN requests that these tariff sheets become effective on November 14, 2002.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27462 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–031]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 16, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Third Revised Sheet No. 128, to be effective November 16, 2002.

GTN states that the filing is being file to incorporate language articulating post-open season procedures as they relate to the awarding of capacity.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27476 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–32–000]

Stingray Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 18, 2002, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 186, to become effective on December 1, 2002.

Stingray states that this filing is being made to comply with Section 2.5 of a Stipulation and Agreement (S&A) filed in Docket No. RP99–166–000 on September 19, 2002. The filing institutes a new provision in section 22.5 of the General Terms and Conditions of Stingray's FERC Gas Tariff that will provide Stingray the right to process delivered natural gas for removal of liquid and liquefiable hydrocarbons so long as Stingray redelivers thermally equivalent quantities of natural gas to its shippers.

Stingray states that a copy of this filing has been served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27470 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–32–002]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 22, 2002.

Take notice that on October 1, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 (''Tariff''), the tariff sheets listed in Appendix A of the filing proposed to be effective on November 1, 2002.

Texas Eastern states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order Issuing Certificate issued June 28, 2002, in Docket No. CP02–32–000 (''June 28 Order''). Texas Eastern states that the tariff sheets listed in Appendix A establish the maximum recourse rate and the related negotiated rate for service on Texas Eastern's TIME Project facilities, as required by the June 28 Order, and incorporate references to the new incremental TIME service into Rate Schedule FT–1 and the General Terms and Conditions of the Tariff, including the reference in Section 3 of Rate Schedule FT–1 specifically required by the Commission in Ordering Paragraph (B)(4) of the June 28 Order.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27448 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–33–000]

Texas Eastern Transmission, LP; Notice of Tariff Filing

October 23, 2002.

Take notice that on October 17, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective on November 1, 2002:

Original Sheet No. 51C
Original Sheet No. 105
Sheet Nos. 106—125
First Revised Sheet No. 297A
First Revised Sheet No. 297B 4th Rev First Revised Sheet No. 529
Fourth Revised Sheet No. 624

Texas Eastern states that these tariff sheets are being filed to implement an initial incremental maximum recourse rate for service under Rate Schedule MLS–1 on the Fayette Lateral, a new lateral constructed under Texas Eastern's blanket certificate authority. In addition, Texas Eastern and Duke Energy Fayette, LLC have agreed to a negotiated rate for up to 125,000 dekatherms per day of firm transportation service on the Fayette Lateral pursuant to Rate Schedule MLS–1 to a new 620 megawatt electric generating plant being constructed by Duke Energy Fayette, LLC in Fayette County, Pennsylvania, with service commencing November 1, 2002. The tariff sheets filed herewith also establish the negotiated rate with Duke Energy Fayette, LLC and, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, reflect the essential elements of the negotiated rate contract.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27471 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–027 and RP93–162–012, CP88–391–028 and RP93–162–013]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Filing

October 23, 2002.

Take notice that on September 30, 2002, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket Nos. CP88–391–027 and RP93–162–012 its annual report of cash-out purchases for the period August 1, 2001 through July 31, 2002. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff. Transco filed various Appendices with the annual cash-out report at A–1, A–2, B–1, B–2, and C–3.

Take notice that on October 11, 2002, Transco filed in Docket Nos. CP88–391–028 and RP93–162–013 to correct certain clerical errors in Appendixes A–1, A–2, and B–1 to its September 30 annual cash-out filing. Transco explains that Appendix A–1 sets forth the quantities purchased and sold for each shipper for cash-out purchases and sales during the Annual Cash-Out Period. Appendix A–2 sets forth the amounts paid to or by each shipper for cash-out purchases and sales during the Annual Cash-Out Period. Appendix B–1 sets forth the quantities purchased and sold for each shipper for cash-out purchases and sales under each Pipeline Interconnect Balance Agreement (PIBA) on Transco's system during the Annual Cash-out Period. In order to correct the clerical errors, Transco submitted revised Appendices A-1, A–2, and B–1 to its Annual Cash-Out Report filed on September 30. Transco asserts that for the convenience of the Commission and interested Parties, it also included the appendices of the September 30 filing which are not being revised: Appendix B–2 which sets forth the amount purchased and sold for each shipper for cash-out purchases and sales under each PIBA and Appendix C–1 which compares Transco's cash-out and PIBA revenues received with costs incurred on a monthly basis for the current annual billing period.

Transco states that the report shows that for the annual cash-out period ending July 31, 2002, Transco has a net underrecovery of $22,908,461. Transco alleges that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed by November 4, 2002, in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27450 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–22–000]

Transcontinental Gas Pipe Line Corporation Notice of Tariff Filing

October 18, 2002.

Take notice that on October 15, 2002, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, and their proposed effective dates are detailed in the Appendix.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19 of the General Terms and Conditions of Transco's

Third Revised Volume No. 1 Tariff. Specifically, such tariff sheets have been revised to include changes associated with (1) completed incremental capacity expansions and (2) miscellaneous adjustments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27464 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–35–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2002.

Take notice that on October 18, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 2, Twelfth Revised Sheet No. 36, with an effective date of July 1, 2002.

WIC states that it is submitting this tariff sheet to add a provision approved in the Docket No. RP02–286–000 proceeding to the tariff sheet recently approved in the Docket No. RP00–484–003 proceeding. No new changes are proposed to the sheet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27473 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

October 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Major Unconstructed Project.

b. *Project No.*: 12379–000.

c. *Date filed*: September 27, 2002.

d. *Applicant*: Lake Dorothy Hydro, Inc.

e. *Name of Project*: Lake Dorothy Hydroelectric Project.

f. *Location*: On 1,804 acres administered by the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact*: Mr. Corry V. Hildenbrand, President, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201, (907) 463–6315; and Ms. Susan Tinney, Licensing Coordinator, S. Tinney Associates, Inc., P.O. Box 985, Lake City, CO 81235, (970) 944–1020.

i. *FERC Contact*: Michael H. Henry, E-mail—*mike.henry@ferc.gov* or telephone (503) 944–6762.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing requests for cooperating agency status*: December 7, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. The application is not ready for environmental analysis at this time.

m. *The Lake Dorothy Project would consist of*: (1) a proposed lake tap of Lake Dorothy and 680-foot-long water transmission tunnel that would discharge water into Dorothy Creek between Lake Dorothy and Lieuy Lake. Water then flows out of Lieuy Lake into Bart Lake via the natural streambed between Lieuy and Bart Lakes, keeping Bart Lake at optimum levels for power generation; (2) a proposed lake tap of Bart Lake, 935-foot-long power tunnel, and 6,900-foot-long penstock from Bart Lake to a 14.3 megawatt surface powerhouse near tidewater; (3) 3.5 half miles of proposed overhead transmission line that would intertie with an existing overhead transmission line from the Snettisham Hydroelectric Project, which conveys power through a submarine cable across the Taku Inlet to Juneau, Alaska. The average annual generation is expected to be 74,500 megawatt hours. The proposed project facilities would be owned by the applicant.

n. A copy of the application is available for review at the Commission

in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

o. *Procedural schedule*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter December 2002
Notice soliciting final terms and conditions December 2002
Notice of the availability of the draft EA April 2003
Notice of the availability of the final EA June 2003
Ready for Commission's decision on the application September 2003

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27454 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2552–058]

Notice of Scoping Meetings and Site Visit and Solicitation of Scoping Comments

October 23, 2002.

Take notice that the following hydroelectric application has been filed with Commission and are available for public inspection:

a. *Type of Application:* License Surrender for the Fort Halifax Project.

b. *Project No.:* 2552–058.

c. *Date filed:* June 20, 2002.

d. *Applicant:* FPL Energy Maine Hydro LLC (FPL).

e. *Name of Project:* Fort Halifax Project.

f. *Location:* The project is located on the Sebasticook River, in Kennebec County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r) 799 and 801.

h. *Applicant Contact:* F. Allen Wiley, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, ME 04330, (207) 623–8413.

i. *FERC Contact:* Any questions on this notice should be addressed to either Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov* or Mr. Robert Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov*.

j. *Deadline for filing scoping comments:* November 15, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2552–058) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. *Description of the Project:* FPL proposes to surrender the license for the Fort Halifax Project. As part of its request, FPL proposes to remove a 72-foot section of the spillway to provide permanent fish passage. The remainder of the dam will remain intact. The partial removal of the dam will result in a lowering of the Fort Halifax impoundment directly upstream of the dam by as much as 25 feet. The partial dam removal will make an additional 5.2 miles of riverine habitat available to anadromous fish using the Kennebec River drainage system.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–502–8222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. *Scoping Process:* The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. As a result of the Commissions July 7, 2002 public notice requesting comments on the application, numerous filings were made raising a variety of issues related to the project. Commission staff will conduct a scoping meeting to receive additional information on the issues raised these filings.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA.

The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Thursday, November 7, 2002.
Time: 10 am to 12 noon.
Place: Elks 905 Banquet & Conference Center.
Address: 76 Industrial Park Road, Waterville, ME.

Public Scoping Meeting

Date: Thursday, November 7, 2002.
Time: 7 pm to 9 pm.
Place: Same location as for the Agency Meeting.
Address: Same address as for the Agency Meeting.

Site Visit

The Applicant and FERC staff will conduct a site visit of the project on November 6, 2002, between 1:30 pm and 3:30 pm. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the project for a short overview of the hydro operations. Participants in the site visit will need to provide their own transportation. All participants are responsible for their own transportation to the site.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA based on comments received to date; (2) solicit from the meeting participants additional information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27457 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2146–090,82–019, and 618–104—Alabama Coosa River Project, Mitchell Project, and Jordan Project]

Alabama Power Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 22, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama and Georgia State Historic Preservation Officer (hereinafter, SHPOs) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project Nos. 2146, 82, and 618.

The programmatic agreement, when executed by the Commission, the SHPOs, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the licenses until the licenses expire or are terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the above projects would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Orders issuing licenses.

Alabama Power Company, as licensee for Project Nos. 2146, 82, and 618, and the Mississippi Band of Choctaw Indians, Jena Band of Choctaw Indians, Chickasaw Nation, Poarch Band of Creek Indians, and the U.S. Bureau of Indian Affairs have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned projects as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Amanda McBride or Representative, Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130–0900.

David Crass or Representative, Georgia Historic Preservation Division, 156 Trinity Avenue S.W., Suite 101, Atlanta, GA 30303–1040.

Christine Norris, Tribal Historic Preservation Officer, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.

William Day, Tribal Historic Preservation Officer, Poarch Band of Creek Indians, 128 Olive St., Pineville, LA 71360.

Rena Duncan, Tribal Historic Preservation Officer, Chickasaw Nation, P.O. Box 1548, Ada, OK 74820.

Ken Carleton, Tribal Historic Preservation Officer, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.

Dr. James Kardatzke, Bureau of Indian Affairs, Eastern Region Office, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Kelly Schaeffer, 6225 Brandon Avenue, Suite 110, Springfield, VA 22150.

Barry Lovett or Representative, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291.

John Harrington, Esq., Office of Solicitor, Southeast Regional Office, 75 Spring St., S.W., Suite 304, Atlanta, GA 30303.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about Historic Properties, including Traditional Cultural Properties. If Historic Properties are to be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie R. Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27455 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–015—Alabama Black Warrior River Project]

Alabama Power Company; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 22, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or

[1] 18 CFR Section 385.2010.

[1] 18 CFR Section 385.2010.

issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2165–015.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the Black Warrior River Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Alabama Power Company, as licensee for Project No. 2165, and the Mississippi Band of Choctaw Indians, Jena Band of Choctaw Indians, Chickasaw Nation, Poarch Band of Creek Indians, U. S. Forest Service, U.S. Army Corp of Engineers, and the U.S. Bureau of Indian Affairs have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation The Old Post Office, Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, DC 20004.

Amanda McBride or Representative, Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130–0900.

Christine Norris, Tribal Historic Preservation Officer, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.

William Day, Tribal Historic Preservation Officer, Poarch Band of Creek Indians, 128 Olive St., Pineville, LA 71360.

Rena Duncan, Tribal Historic Preservation Officer, Chickasaw Nation, P.O. Box 1548, Ada, OK 74820.

Ken Carleton, Tribal Historic Preservation Officer, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.

Dr. James Kardatzke, Bureau of Indian Affairs, Eastern Region Office, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Elrand Denson or Representative, United States Forest Service, 2946 Chestnut St., Montgomery, AL 36107–3010.

Michael Eubanks, United States Army Corp of Engineers, 109 Saint Joseph St., Mobile, AL 36628.

Charles Gault, Esq., Office of Solicitor, 530 Gay St., Room 308, Knoxville, TN 37918.

Kelly Schaeffer, 6225 Brandon Avenue, Suite 110, Springfield, VA 22150.

Barry Lovett or Representative, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291.

We propose to remove the following person from the restricted service list for the aforementioned project because his interests will be taken into account through the Forest Service: Robert Pasquill, United States Forest Service, 2946 Chestnut St., Montgomery, AL 36107–3010.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about Historic Properties, including Traditional Cultural Properties. If Historic Properties are to be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27456 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12125–001]

Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

October 22, 2002.

Take notice that Quantum Energy Solutions, permittee for the proposed Grays Harbor Project, has requested that its preliminary permit be terminated. The permit was issued on March 13, 2002, and would have expired on February 28, 2005. The project would have been located on the Pacific Ocean and Grays Harbor in Grays County, Washington.

The permittee filed the request on August 28, 2002, and the preliminary permit for Project No. 12125 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27452 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12126–001]

Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

October 22, 2002.

Take notice that Quantum Energy Solutions, permittee for the proposed Newport, Oregon Jetty Project, has requested that its preliminary permit be terminated. The permit was issued on March 13, 2002, and would have expired on February 28, 2005. The project would have been located on the Pacific Ocean and Yaquina River in Lincoln County, Washington.

The permittee filed the request on August 28, 2002, and the preliminary permit for Project No. 12126 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall

remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27453 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–8–000]

Revised Public Utility Filing Requirements; Notice

October 21, 2002.

1. In Order Issuing Instruction Manual for Public Utilities to Use to File Their Electric Quarterly Reports, issued on May 29, 2002, the Commission defined the specific filing instructions for complying with Order 2001, Revised Public Utility Filing Requirements, (67 FR 31043, FERC Stats. & Regs. ¶ 31,127, April 25, 2002). This notice is to provide guidance to aid public utilities preparing their Electric Quarterly Report filings and to clarify previous instructions.

2. This guidance is divided into four parts: general information, filer information, contract information, and transaction information. In this document, ''Filer, Contract, and Transaction Templates'' refer to the three sheets of the Excel format (or the three sections of the CSV format) detailing the proper file structure of the Electric Quarterly Report. These are posted on FERC's web site at *http://www.ferc.gov/electric/electric.htm*. Filers are encouraged to read this guidance to ensure that they fill out their Electric Quarterly Reports correctly.

General Information

3. Every utility with a tariff on file with the Commission pursuant to Part 35 of the Commission's regulations must file the Electric Quarterly Report, even if there are no contracts under any of a utility's tariffs or rate schedules, or no sales were made during the quarter. Respondents without sales should leave the transaction template blank.

4. Utilities must inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. A newly authorized power marketer may elect to report such changes in conjunction with its updated market analysis or in a separate report filed under the docket number in which it received market-based rate authority. Such designations were previously filed with the first Power Marketer Quarterly Report.

For the October 31, 2002 Filing:

5. When filling out the description information in the E-filing web page, list every regulated utility by name that is included in the filing as a seller. (In other words, if a parent company is filing for several subsidiaries, each of which has tariffs on file, each subsidiary should be listed separately in the description.) This will aid searches in FERRIS for the desired filing.

6. If the EQR filing is over 10 Mb, break it up as described in the Commission's July 1, 2002 order.[1] If multiple files are necessary, in addition to using the file naming convention described in the July order, please identify which file is being attached (i.e., Volume 1, Volume 2, etc.) in the description field on the e-filing page. There is no need to repeat the Filer or Contract Template data on each file.

7. If the filing is 10 Mb. or less, please submit all of the data in one file rather than making multiple smaller filings.

Filer Information

8. In most cases, the agent, respondent, and seller will be the same. Each should be identified. Contact information is required for at least the respondent.

a. The agent is the party that physically makes the filing.

b. The respondent is the company taking responsibility for making the filing. In many cases, the filing is on behalf of a single seller, and the respondent and seller are the same. Other possibilities include a parent company making the filing for subsidiary companies listed as sellers, a service company making a filing on behalf of affiliated sellers, or an RTO/ISO making a filing on behalf of its member utilities.

c. Sellers are public utilities that have tariffs and/or rate schedules on file at FERC.

Contract Information

9. Seller company name must be spelled exactly as listed on the Filer Template.

10. Customer DUNS number is a required field, as stated in the final rule. Filings that are missing DUNS numbers are incomplete.

11. FERC tariff reference should list the tariff and/or rate schedule approved by the Commission. For independent power marketers, this is likely ''Rate Schedule No. 1,'' the rate schedule authorizing sales at market based rates. Examples of other appropriate entries are listed on the example templates on the FERC's web site at *http://www.ferc.gov/electric/EQR-Excel-Example.xls*.

12. Contract Service Agreement ID is a unique (company) name given to each service agreement. It may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it can be an internal numbering system. The filer must be able to readily identify and produce a contract based on the Contract Service Agreement ID.

13. The first twelve fields on the Contract Template apply to the entire contract/service agreement. The last twenty fields in the template apply to each contract product. If a contract includes multiple products, each has to be listed separately.

14. Dates: There are six date fields in the contract template. The first four are related to the contract itself, and the last two address the contract products. These are:

a. Contract Execution Date is the date the contract was signed. If the parties signed on different dates, or there are different contract amendments, use the latest date signed as the contract execution date.

b. Contract Commencement Date is the first date the contract was effective—frequently the first date of service under a contract.

c. Contract Termination Date is the date specified (if any) in the contract that the contract will expire of its own terms.

d. Actual Termination Date is the date the contract actually terminates. This could be the contract termination date, or any other date the parties agree to. This field will only be filled out after the contract has been terminated.

e. Begin and End Dates apply to contract products, rather than the whole contract, and are to be used when there are multiple time frames addressed in the contract. If all products listed in the contract begin and end on the same dates as the contract does, there is no need to list dates in these Begin and End Date fields. Therefore, in most cases, these fields will be left blank. An example of when and how these fields should be used is this: in a five-year power sales contract with a different quantity and price specified for each

[1] Order Denying Requests for Rehearing, Requests for Stay and Request for Extension, and Providing Clarification, 100 FERC ¶ 61, 074 (2002).

year, the product (power) would be listed on five lines. Each listing would have a unique begin and end date and the price assigned for each year would be listed on the appropriate line. Another example is a transmission contract with several ancillary services. The transmission service and each of the ancillary services could have different begin and end dates.

15. At least one of the four rate fields (rate, rate minimum, rate maximum, rate description) must be filled out. For example, most market-based rates should state ''Market-Based Rate'' in the Rate Description Field. If the service does not have a rate, NA should be entered in the rate description field.

16. Other mandatory fields include: Customer name, Contract Affiliate, FERC Tariff Reference, Contract Service Agreement ID, Contract Execution Date and/or Contract Commencement Date.

Transaction Information

17. Transaction data should be filed for all power sales pursuant to Part 35 tariffs on file with the Commission. This includes cost-based and market-based rate sales.

18. Seller company name must be exactly as listed on the Filer and Contract templates.

19. Customer information must be exactly as listed on the Contract template.

20. FERC Tariff Reference and Contract Service Agreement ID must be exactly as listed in the Contract Template.

21. The system will allow negative numbers in the price and charge fields.

22. Whether and how certain types of transactions should be reported are set forth below:

23. ''Tolling'' and barter transactions: Tolling transactions are energy conversion services (i.e., converting gas/oil/coal into MW). Some contracts provide for barter payments (a portion of the fuel or output). These are reportable as a sale of electricity under a utility's MBR tariff. Barter transactions should be converted to a monetary basis in the same manner used by the utility in its SEC and IRS filings, and reported on the Electric Quarterly Report.

24. Bundled service:

a. If power is sold at a ''delivered price'' at a specified point (and transmission and ancillary services are not separately delineated), only the delivered price should be reported on the Electric Quarterly Report as the price of power.

b. If the power is purchased at one location and, as part of the sale, it is transmitted to another location, the transmission and any other related charges should be reported separately for market-based prices. For grandfathered cost-based rates bundled with transmission, a product name will be added (''grandfathered bundled'') that identifies the transaction as a grandfathered rate. Grandfathered services are those that provided for bundled transmission, ancillary and energy prior to the effectiveness of Order No. 888's OATTs. For Grandfathered transactions, report the Commission-approved bundled rate without separating the rate into transmission and energy components.

c. The Electric Quarterly Report has a column for the transmission component of energy sales. However, many different services in addition to transmission are associated with energy sales (ancillary services most common).The Commission needs to understand the derivation of the total commodity price. To the extent that there are services delineated in the contract that are part of the total sale, they should be listed on separate lines and priced separately (other than the exception detailed above for Grandfathered rates).

25. Rate design: Many services do not have one-part commodity rates/prices for energy sales. Utilities should use different lines for listing the different components of the rate/price (such as reservation fee, commodity price, etc.) in the Contract and Transaction Templates.

26. Capacity, RMR, and stand-by service should be reported with the commodity sales if they are in the market-based rate contract. The transactions, including these charges, should be sufficiently detailed to explain the derivation of the price.

27. ''Border Agreement'' energy sales, exchanges as part of a Rate Schedule, emergency sales or other sales/exchanges under an Interconnection Agreement, line loss adjustments, and ISO day-ahead trades are reportable, just as any other trade or sale is.

28. In general, QF energy transactions are not reportable, as they have ''exempt'' status. However, some utilities with a QF exemption have a Part 35 tariff on file with the Commission, in which case transactions under that tariff are reportable.

29. Marketing fees (the fee a marketer charges the utility with a tariff for marketing the energy) should not be included in the Electric Quarterly Report if they are included in the price of the energy. However, if the marketing fee is assessed separately to the buyer in addition to the price of the energy, the fee should be broken out and shown on a separate line.

30. Options that go to delivery should be reported at the strike price. Revenue from the sale of the option should not be reported.

Revisions to Electric Quarterly Reports

31. A utility must file a revised Electric Quarterly Report if more complete information is obtained or errors are found in a utility's Electric Quarterly Report. Some structured markets do not give prices/revenues to sellers until after 30 or more days, so the pricing data will not be available by the report date. Utilities should enter the transaction quantities and nothing for the unknown prices, and file revised reports when the information becomes available.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27458 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Collections From Central Valley Project Power Contractors To Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures.

SUMMARY: The Western Area Power Administration (Western) is proposing revised procedures for the assessment and collection of restoration fund payments from the Central Valley Project (CVP) Power Contractors as required by the Central Valley Project Improvement Act of 1992 (CVPIA). These proposed procedures take a different approach toward assessing Power Contractors' collections that more closely reflects Western's 2004 Power Marketing Plan. Existing procedures are linked to an older and soon to be obsolete Power Marketing Plan. The existing procedures became effective on September 3, 1998, and will remain in effect until superseded by this process.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end December 30, 2002. Western will present a detailed explanation of the proposed procedures at a public information forum on November 20, 2002, at 10 a.m., PST. It will receive oral and written comments at a public comment forum beginning at 1 p.m., PST, on this same date. Western

must receive all comments by the end of the comment period to ensure they are considered.

ADDRESSES: Western will hold the public information and comment forums at the Sierra Nevada Region Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710. Send comments to: Mr. Thomas R. Boyko, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710, e-mail *boyko@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Melinda C. Grow, Public Utilities Specialist, Rates Division, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4443, e-mail *grow@wapa.gov*.

SUPPLEMENTARY INFORMATION: Section 3407 of the CVPIA (Pub. L. 102–575, Stat. 4706, 4726) establishes in the Treasury of the United States the CVP Restoration Fund (Restoration Fund) to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA. The CVPIA further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP Water and Power Contractors (Restoration Payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining and collecting the CVP Water and Power Contractors' share of the annual Total Power Restoration Fund Payment Obligation.

Because Western markets and transmits CVP power and maintains all CVP power contracts, Western agreed to administer the assessment and collection of the Restoration Payments from CVP Power Contractors. Western executed a letter of agreement with Reclamation to establish procedures for depositing collections from CVP Power Contractors into the Restoration Fund.

Through an open and public process, the existing procedures became effective on September 3, 1998, and remain in effect until superseded (63 FR 41561, August 4, 1998). Western indicated that it would review the procedures associated with the assessment and collection of the Restoration Payments from CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation; (2) if a material issue arises; (3) if an apparent inequity in the procedures is discovered; or (4) if any significant change occurs that affects the procedures.

Western published a new Marketing Plan (2004 Power Marketing Plan) in the **Federal Register** on June 25, 1999, that specifies the terms and conditions under which Western will market power from CVP and the Washoe Project beginning January 1, 2005 (64 FR 34417). Since the current methodology for the assessment and collection of Restoration Fund payments from the CVP Power Contractors is tied to the 1994 Marketing Plan (57 FR 45782, October 5, 1992) and long-term firm CVP power contracts will expire on December 31, 2004, it is necessary to change the assessment and collection of Restoration Payments from CVP Power Contractors.

Western will prorate and assess to CVP Power Contractors the annual Power Restoration Payment Obligation (PRPO), as determined by Reclamation. Western will issue each CVP Power Contractor a monthly Restoration Fund Bill reflecting its share of the PRPO. The CVP Power Contractors will pay that amount to Western. Western will transfer all amounts collected from CVP Power Contractors to Reclamation for deposit into the Restoration Fund.

The following table provides a summary comparison of the existing procedures and proposed procedures.

TABLE 1.—HIGHLIGHTS OF CHANGES FOR ASSESSING THE ANNUAL PRPO TO CVP POWER CONTRACTORS

Methodology element	Existing procedures	Proposed procedures
Effective Date	September 3, 1998	January 1, 2005.
Assessment of Prorated Charges	Based on actual capacity and energy amounts delivered by or scheduled by Western.	Based on assigned Base Resource Percentage as articulated in the 2004 Power Marketing Plan.
Method of Calculation	Capacity and energy multipliers multiplied by actual capacity and energy amounts. The multipliers are calculated using prior year power sales to recover the PRPO.	Each Power Contractor's Base Resource Percentage is multiplied by the PRPO to determine their annual PRPO obligation.
Assessment Year	June 1 through May 31	None.
Billing Year	September through August	No change.
Exclusion of First Preference Customers	Three First Preference Customers	All First Preference Customers.
Annual Reconciliation	None required	Required due to Exchange Program and posted on Power Contractor's August bill.

Acronyms and Definitions

As used throughout the remainder of this notice, the following acronyms and definitions when used with initial capitalization, whether singular or plural, will have the following meanings:

2004 Power Marketing Plan: The final marketing program for the Sierra Nevada Region power after 2004 established through a public process and published in the June 25, 1999, **Federal Register** (64 FR 34417).

Administrator: The Administrator of the Western Area Power Administration.

Assessment Month: The service month, which is 3 months prior to the Billing Month. This term is used in the August 4, 1998, **Federal Register** (63 FR 41561) procedures and will become obsolete assuming this proposed procedure is finalized and approved.

Assessment Year: The period that uses the service months from June 1 through May 31 for billing CVP Power Contractors for Restoration Payments. This term is used in the August 4, 1998, **Federal Register** (63 FR 41561) procedures and will become obsolete assuming this proposed procedure is finalized and approved.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004, determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves,

transformation losses, and certain ancillary services.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Billing Year: The period, September through August, that represents the annual Restoration Fund billing cycle.

Central Valley Project (CVP): The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (CVPIA): Title 34 of Public Law 102–575, 106 Stat. 4706, *et seq.* A legislative act, enacted on October 30, 1992, that defines provisions for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Exchange Program: Established in the **Federal Register** for the 2004 Power Marketing Plan and intended to allow customers to fully and efficiently use their power allocations.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or Tuolumne counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Fiscal Year (FY): The year which begins October 1 and ends September 30.

Interior: United States Department of the Interior.

kW: Kilowatt, the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour, the electrical unit of energy that equals the generation of 1,000 watts over 1 hour.

Letter of Agreement: Letter of Agreement No. 93-SAO–10156, a written agreement between Reclamation and Western that establishes procedures to deposit the Restoration Payments collected from CVP Power Contractors into the Restoration Fund.

Midyear Adjustment: The adjustment to the annual PRPO as determined by Reclamation on or about April 1 of each year.

Power: Capacity and energy.

Power Contractor: An entity purchasing power from Western for a period in excess of 1 year.

Power Restoration Payment Obligation (PRPO): The portion of the Total Restoration Payment Obligation calculated and assigned annually to CVP Power Contractors by Reclamation.

Project Use: The power used to operate CVP or Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation law.

Reclamation: United States Department of Interior, Bureau of Reclamation.

Restoration Fund: The CVP Restoration Fund, established by Section 3407 of the CVPIA, into which revenues provided by the CVPIA are deposited, and from which funds are appropriated by the Secretary to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA.

Restoration Fund Bill(s): The instrument prepared and issued monthly as a mechanism for collecting the Restoration Payments from CVP Power Contractors.

Restoration Payment(s): The amount(s) recorded as payable on CVP Power Contractors' Restoration Fund Bills.

Secretary: Secretary of DOE.

Total Power Restoration Fund Payment Obligation: The total amount of payments collected from the CVP Water and Power Contractors calculated annually by Reclamation.

Washoe Project: The Federal water project located in the Lahontan Basin in west-central Nevada and east-central California, as described in Western's final 2004 Power Marketing Plan for the Sierra Nevada Region.

Western: United States Department of Energy, Western Area Power Administration.

Proposed Procedures

Determination of the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for assigning the PRPO for the CVP Power Contractors. On or about July 1 of each year, Reclamation will provide a letter to Western's Regional Manager of the Sierra Nevada Region with the determined PRPO amount and a detailed explanation of the computation for the upcoming FY. Upon receiving the letter from Reclamation, Western will notify each CVP Power Contractor of the Total Power Restoration Fund Payment Obligation and the monthly amounts to be collected from CVP Power Contractors.

Allocating the Power Restoration Payment Obligation (PRPO)

Western will allocate the PRPO among CVP Power Contractors each FY. After notification by Reclamation, Western will calculate the annual obligation for each CVP Power Contractor. Western will base its calculation on the assigned Base Resource percentage for each CVP Power Contractor as detailed in the 2004 Power Marketing Plan. This annual obligation will be divided by the number of months in the FY; *i.e.*, twelve, or in the case of FY 2005, the number of months remaining in the FY; *i.e.*, nine, to determine the monthly obligation.

Since the 2004 Power Marketing Plan does not begin until January 1, 2005, and Restoration Fund collections for FY 2005 (October 1, 2004, through September 30, 2005) begin prior to this, FY 2005 will be a transition year for Restoration Fund collections from Power Contractors.

Western will base Restoration Fund collections from Power Contractors for October through December 2004 upon the existing collection methodology articulated in the August 4, 1998, **Federal Register**. Western intends to begin collection under these new proposed procedures beginning with January 2005 collections. As a point of clarification, Western will bill the Power Contractors for the October 2004 collection in their September 2004 bills based upon energy and capacity amounts for their June 2004 service month. A similar process will continue through the December 2004 collection.

In December 2004, Western will total the Restoration Fund collections made by the Power Contractors from October and November 2004, and the amounts payable for December 2004, and subtract this amount from the annual PRPO to calculate the balance to collect for the remaining 9 months (January through September) of the FY. Western will multiply this total by each Power Contractor's Base Resource percentage. This amount will then be divided by nine to determine each Power Contractor's monthly obligation.

Year-End Reconciliation Process

Implementation of the Exchange Program may result in some Power Contractors receiving small amounts of energy in excess of their Base Resource in some months. Although recipients of this exchange energy will pay for this power, Restoration Fund obligations are based on the Power Contractors' percentage of the Base Resource excluding exchange energy. Alternatively, some Power Contractors that are not able to use all of their Base Resource and return it as exchange energy could be overpaying their Restoration Fund obligations since their actual power usage might be less than their Base Resource percentage.

In an effort to rectify underpayment made by recipients of exchange energy and overpayments by other Power Contractors, Western will conduct a

reconciliation process, otherwise known as an annual true up, before preparing August Restoration Fund Bills. This reconciliation will require Western to identify energy amounts exchanged among individual Power Contractors on a monthly basis through July. This information will provide the basis for determining the amount of energy exchanged during the billing year.

Western will add an additional charge or a balloon payment to the August Restoration Fund Bills for each Power Contractor who received exchange energy during the past year. Conversely, Western will also post an offsetting credit for those Power Contractors that provided exchange energy on their August bill.

Exclusion of First Preference Customers From the Power Restoration Payment Obligation

Western has discretion how the PRPO is assessed to CVP Power Contractors. As a consequence, Western previously reviewed the CVPIA regarding the assessment of the Restoration Fund's costs, and similar costs under other related legislation affecting CVP Power Contractors. Western also reviewed Trinity County's contribution toward the restoration programs compared to contributions made by other CVP Power Contractors. Western concluded from this review that Trinity County may, at times, pay a greater share of the costs toward the restoration programs. As a means of mitigating the effects of these restoration programs on Trinity County, coupled with the socioeconomic effects the construction of the Trinity Dam has had on the community, Western intends to exclude Trinity County indefinitely from the PRPO.

Similar consideration was given to the remaining three First Preference Customers: Tuolumne Public Power Agency (TPPA), Calaveras Public Power Agency (CPPA), and Sierra Conservation Center (SCC). Construction of the New Melones Dam on the Stanislaus River has contributed to improved fishery habitat and water quality in the Stanislaus and San Joaquin rivers, as well as the South Delta. Given these circumstances, Western intends to exclude TPPA, CPPA, and SCC indefinitely from the PRPO.

Collection of CVP Power Contractors Restoration Fund Payment

Each CVP Power Contractor will receive a Restoration Fund Bill each month on or about the twenty-fifth (25th), but no later than the last day of the month. The Restoration Fund billing cycle for each FY will begin within 30 days following August 1 or the date written notification of the annual PRPO is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable before the close of business on the twentieth (20th) calendar day each Restoration Fund Bill is issued or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Payments

Western will add a late payment charge of five hundredths percent (0.05%) of the principal amount unpaid for each day the Restoration Fund Bill payment is delinquent. Western will apply any payments received to the charges for the late payment assessed on the principal first and then to the payment of the principal.

Deposit of CVP Power Contractors' Restoration Payments Into the Restoration Fund

On or about the twenty-seventh (27th) calendar day of the month following each Billing Month, Western will transfer all of the Restoration Payments received, including late payment charges, to Reclamation for deposit into the Restoration Fund. The thirtieth (30th) of September of each FY is the last day Western will transfer Restoration Payments, including late payment charges, to Reclamation for that FY.

Adjustment to the PRPO

Each FY's annual PRPO is subject to a Midyear Adjustment determined by Reclamation. The Midyear Adjustment occurs on or about April 1 of each FY, following Reclamation's annual determination of available CVP water supply for the year. Reclamation notifies Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's notification, Western will factor the Midyear Adjustment amount into the calculation for the remaining PRPO for the year. Western will then notify each CVP Power Contractor of the Midyear Adjustment to the annual PRPO.

Instruction for Mailing Public Comments

The comment period will begin with the publication of this notice in the **Federal Register** and will end 60 days after publication. Western must receive all comments by the end of the comment period to assure consideration. Written comments can be mailed, faxed, or e-mailed to Mr. Thomas R. Boyko, Power Marketing Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, fax (916) 985–1931, e-mail *boyko@wapa.gov*.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final procedures, will be made available for inspection and copying at Western's Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, CA 95630–4710.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. This notice is not required to be cleared by the Office of Management and Budget.

Dated: October 9, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–27442 Filed 10–28–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Estuary Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Estuary Program, EPA ICR Number 1500.05, OMB Control Number 2040–0138, expiring April 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 30, 2002.

ADDRESSES: Comments should be sent to the Coastal Management Branch; Oceans and Coastal Protection Division (4504T); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person identified below.

FOR FURTHER INFORMATION CONTACT: Darrell Brown at 202/566–1256 (phone); 202/566–1336 (facsimile); *brown.darrell@epa.gov* (e-mail) or Greg Colianni at 202/566–1249 (phone); 202/566–1336 (facsimile); *colianni.gregory@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities affected by this action are those State or local agencies or nongovernmental organizations that receive grants under section 320 of the Clean Water Act, the National Estuary Program (NEP). EPA provides grants to these entities to support 28 National Estuary Programs around the country and in Puerto Rico. Each entity receiving such a grant must submit an annual workplan that describes the projects and activities to be carried out using the section 320 funds and that documents the source of the 50% non-federal matching funds required by section 320. Every three years each NEP must also submit information about progress being made in implementing its comprehensive conservation and management plan (CCMP). Each entity must also submit annual Government Performance Results Act (GPRA) information.

Title: National Estuary Program (OMB control #2040–0138; ICR #1500.05) expiring April 30, 2003.

Abstract

Annual Workplans

The NEP involves collecting information from the State or local agency or nongovernmental organizations that receive funds under section 320 of the Clean Water Act. The regulation requiring this information is found at 40 CFR part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of CCMPs for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) Progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

Implementation Reviews

EPA provides funding to NEPs to support long-term implementation of CCMPs if such programs pass an implementation review process. Implementation reviews are used to determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all implementation reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, implementation reviews will be required for 9 programs in FY2004 and 19 programs in FY2005. No implementation reviews will be required in FY2003.

Government Performance Results Act

EPA requests that each of the 28 NEP receiving section 320 funds reports information that can be used in the GPRA reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress along with GPRA information from other EPA programs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Request for Comments

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated burden for the 28 NEPs totals about 18,340 hours for the cycle 4/30/2003 to 4/30/2006 or about 6,113 hours/year on average. Total hours are based on the following estimates:

100 hours/annual workplan 28 NEPs = 2,800 hours/year; 3 years = 8,400 hours

250 hours/implementation review 9 NEPs = 2,250 hours/FY2004

250 hours/implementation review 19 NEPs = 4,750 hours/FY2005

35 hours/annual GPRA reporting 28 NEPs= 980 hours/year; 3 years = 2,940 hours

There is no anticipated cost burden for the NEPs to report the requested information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise

disclose the information. These burden estimates are for preparation of the annual workplans, implementation review reports, and GPRA reports.

Please send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: October 21, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 02–27494 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; Information Collection Activities Associated With EPA's Energy Star Buildings Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Information Collection Activities Associated with EPA's ENERGY STAR Buildings Program, EPA ICR Number 1772, OMB Number 2060–0347. OMB approval expires on April 30, 2003. Before submitting the ICR to OMB, EPA is soliciting comments on specific aspects of the information collection activities as described below.

DATES: Comments must be submitted on or before December 30, 2002.

ADDRESSES: Climate Protection Partnerships Division, U.S. EPA (MC–6202J), 1200 Pennsylvania Ave., NW, Washington, DC 20460. ICR may be obtained electronically by contacting Mary Susan Bailey via e-mail at *bailey.marysusan@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Susan Bailey, phone: 202–564–0189, fax: 202–565–2083, *bailey.marysusan@epa.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Information Collection Activities Associated with EPA's ENERGY STAR Buildings Program (OMB Number 2060–0347, EPA ICR Number 1772), expiring on April 30, 2003.

Abstract: ENERGY STAR is a voluntary program aimed at preventing pollution rather than controlling it after its creation. The program focuses on reducing utility-generated emissions by reducing the demand for energy. EPA introduced ENERGY STAR in 1991 by launching the Green Lights program to encourage corporations, state and local governments, colleges and universities, and other organizations to adopt energy efficient lighting as a profitable means of preventing pollution and improving lighting quality. Since then, EPA has expanded ENERGY STAR to encompass organization-wide energy efficiency, such as building technology upgrades (*e.g.*, HVAC systems), product purchasing initiatives, and employee training. At the same time, EPA has streamlined the reporting requirements of ENERGY STAR and focused on providing incentives for improvements (*e.g.*, ENERGY STAR Awards Program). EPA also makes tools and other resources available over the web to help the public overcome the barriers to evaluating their energy efficiency and investing in improvements.

To join ENERGY STAR, organizations are asked to complete a Partnership Letter or Agreement that establishes their commitment to energy efficiency. Partners agree to undertake efforts such as measuring, tracking, and benchmarking their organization's energy performance by using tools such as those offered by ENERGY STAR; developing and implementing a plan to improve energy performance in their facilities and operations by adopting a strategy provided by ENERGY STAR; and educating staff and the public about their partnership with ENERGY STAR, and highlighting achievements with the ENERGY STAR Label, where available.

Partners also may be asked to periodically submit information to EPA as needed to assist in program implementation. For example, EPA compiles the Energy Service and Product Provider Directory to provide the public with easy access to energy efficiency products and services. Businesses wishing to appear in this directory are asked to submit a completed form that details their products and services.

Partnership in ENERGY STAR is voluntary and can be terminated by partners or EPA at any time. EPA does not expect organizations to join the program unless they expect participation to be cost-effective and otherwise beneficial for them.

In addition, partners and any other interested party can help EPA promote energy-efficient technologies by evaluating the efficiency of their buildings by benchmarking individual buildings by using EPA's on-line benchmarking tool, Portfolio Manager, and apply for ENERGY STAR Labels if their performance ranks in top 25 percent. If they can demonstrate that an individual building meets the ENERGY STAR criteria, they will receive an ENERGY STAR plaque that they can display on the building. EPA does not expect that organizations will deem any information collected under ENERGY STAR to be confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public burden for this collection of information will vary depending on the type of participant, the specific collection activity, and other factors. The annual burden for joining ENERGY STAR and conducting related activities is estimated to range from about 2 to 8 hours per respondent. This includes time for preparing and submitting the Partnership Letter or Agreement and other information as requested. The burden for applying for an ENERGY STAR Label is estimated to range from about 5.5 to 10.5 hours per respondent. This includes time for reading the instructions of the benchmarking tool if needed, gathering and entering information on building characteristics and energy use into the tool, printing a score report, and preparing/submitting the ENERGY STAR Label application materials to EPA. The burden for applying for an ENERGY STAR Award is estimated to range from 4 to 26.5 hours per respondent. This includes time for

preparing and submitting the awards application materials to EPA.

The total annual operation and maintenance costs to respondents collectively is estimated to be $1.54 million. This includes the cost to organizations applying for an ENERGY STAR Label to contract a Professional Engineer to conduct a facility inspection and notarize the score report. It also includes postage costs for various submittals from the public to EPA. There is no capital cost to respondents.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Participants in ENERGY STAR.

Estimated Annual Number of Respondents: 5,000.

Frequency of Response: One-time, annually, and/or periodically, depending on type of respondent and collection.

Estimated Total Annual Hour Burden: 83,343 hours.

Estimated Total Annualized Capital, Operation/Maintenance Cost Burden: $1,540,483.

Dated: October 21, 2002.

Kathleen Hogan,

Director, Climate Protection Partnerships Division.

[FR Doc. 02–27497 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–2]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Weyerhaeuser Company* v. *Whitman, et al.*, No. 01–1122 (DC Circuit). This case concerns the final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills,'' published at 66 FR 3179 on January, 12, 2001.

DATES: Written comments on the proposed settlement agreement must be received by November 29, 2002.

ADDRESSES: Written comments should be sent to Steven Silverman, Air and Radiation Law Office (2366A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606.

SUPPLEMENTARY INFORMATION: EPA has promulgated a number of National Emission Standards for Hazardous Air Pollutants (NESHAP) for the pulp and paper source category. This notice concerns the NESHAP for the chemical recovery combustion processes, whereby spent pulping liquors (so-called black liquor) are thermally regenerated for reuse in the pulping process. *See* 66 FR 3179 (January 12, 2001) (promulgating a new subpart MM to Part 63). The Weyerhaeuser Company filed a timely petition for review of portions of the rule dealing with emission standards for the sulfite process subcategory. *Weyerhaeuser Company* v. *Whitman, et al.*, No. 01–1122 (DC Circuit).

Weyerhaeuser and EPA have now reached initial agreement on a settlement of the case which could lead to the voluntary dismissal of the petition for review. The settlement requires EPA to sign a proposed rule and/or a notice of direct final rulemaking no later than December 1, 2002, incorporating certain amendments, and to take final action concerning these amendments no later than June 1, 2003.

Under the settlement, EPA would propose (or issue a direct final rule subject to withdrawal in the event of significant adverse comment) revised standards applicable to a single sulfite process pulping mill located in Cosmopolis, Washington. This mill contains an apparently unique source involved in black liquor recovery (a so-called hog fuel dryer) which is not regulated under any of the Pulp and Paper NESHAPs, nor under any other NESHAP. The initial settlement would amend the rule to allow this mill to demonstrate compliance by controlling this emission source rather than controlling sources otherwise regulated under the rule. The company has submitted information to EPA (available in the docket to the rule) demonstrating persuasively that the projected level of control would remove more hazardous air pollutants of the same type (*i.e.* metal hazardous air pollutants, for which particulate matter is a surrogate) than would be controlled under the existing rule. The company also believes that it is more economical to control the hog fuel dryer than other emission points regulated under the existing rule. The initial settlement would not otherwise affect any of the standards in the promulgated rule, and would not alter that rule's compliance date (which would remain January 12, 2004).

EPA believes that the compliance alternative contemplated in the initial settlement offers additional compliance flexibility and should result in greater emission control of hazardous air pollutants than the existing rule. The Agency thus believes that this is a reasonable settlement.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: October 22, 2002.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–27344 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–2]

Meeting of the National Drinking Water Advisory Council Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal

Advisory Committee Act,'' notice is hereby given of a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 3300f *et seq.*). The Council will hear presentations and have discussions on topics important to the Environmental Protection Agency's national drinking water program, including, but not limited to: updates on the Ground Water and Radon rules; status reports from the NDWAC's working groups on Affordability and the Contaminant Candidate List; source water protection initiatives; and progress in implementing the Public Health Security and Bioterrorism Preparedness Response Act of 2002.

DATES: The Council meeting will be held on November 20, 2002, from 8:30 a.m. until 5:30 p.m. and November 21, 2002, from 8:30 a.m. until 1:00 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at The Westin Philadelphia Hotel located at 99 South 17th Street, Philadelphia, Pennsylvania 19103 and are open to the public.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by phone at 202–564–3791, by e-mail to *johnson.brendap@epa.gov,* or by regular mail to the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue NW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify the Council's Designated Federal Officer by telephone at (202) 564–3791 no later than November 13, 2002. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Dated: October 23, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–27498 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.–5 p.m., November 14, 2002.

8:30 a.m.–12 p.m., November 15, 2002.

Place: Corporate Square Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Secretary and the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters To Be Discussed: Agenda items include issues pertaining to (1) STD/HIV program integration (2) Global AIDS Activities and (3) syphilis elimination efforts. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, Public Health Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail *pbf7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 23, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27431 Filed 10–28–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health Meeting: Correction

ACTION: Notice; correction.

Name: Interagency Committee on Smoking and Health.

Date and Time: November 6, 2002, 9 a.m. to 4 p.m.

Correction

In the **Federal Register** of September 5, 2002, Volume 67, Number 172, Notices, Pages 56844–56845, under ''PLACE'' Should read: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD, 20814, telephone 301/657–1234 or fax 301/657–6453.

Correction

In the **Federal Register** of September 5, 2002, Volume 67, Number 172, Notices, Pages 56844–56845, under ''DATE and TIME'' Should read: November 6, 2002, 9 a.m. to 4 p.m.

Contact Person for More Information: Ms. Monica L. Swann, Committee Management Specialist, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 23, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27432 Filed 10–28–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Intermediary Medicare Claims Record (IMCR) System,'' System No. 09–70–0503. We propose to delete published routine uses numbered 1, 3, 4, 5, 6, 7, 9, 12, 14, 16, 17, 18, 21, 23, 24, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). We propose to delete published routine uses number 1 authorizing disclosure to claimants and their authorized representatives, number 3 authorizing disclosure to third party contacts to establish or verify information, number 4 authorizing disclosure to the Treasury Department for investigating alleged theft, number 5 authorizing disclosure to the United States Postal Service (USPS), number 6 authorizing disclosure to the Department of Justice (DOJ) to combat fraud and abuse, number 7 authorizing disclosure to the Railroad Retirement Board (RRB), number 9 authorizing disclosure to State Licensing Boards for review of unethical practices, number 12 authorizing disclosure to state welfare departments, number 14 authorizing disclosure to state audit agencies, number 16 authorizing disclosure to senior citizen volunteers to assist beneficiaries, number 17 authorizing disclosure to a contractor to recover erroneous Medicare payments, number 18 authorizing disclosure to state and other governmental Workers' Compensation Agencies, number 19 authorizing disclosure to insurance companies providing protection to enrollees, number 21 authorizing disclosure to an agency of a state government or established by law, number 22 authorizing disclosure to insurers who are primary payers to Medicare, number 23 authorizing disclosure to the Internal Revenue Service (IRS), number 24 authorizing disclosure to servicing fiscal intermediaries/carriers banks to transfer remittance advice to Medicare, and an unnumbered routine use authorizing disclosure to the SSA.

Disclosures permitted under routine uses number 4, 5, 7, 9, 12, 14, 18, 21, 23, and to the SSA will be made a part of proposed routine use number 2. Proposed routine use number 2 will allow for release of information to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent.'' Disclosures permitted under published routine uses number 1, 3, 16, and 24 will be combined with published routine use number 2, which permits release to ''third party contacts,'' and covered by proposed routine use number 3. Disclosure authorized to ''insurance companies providing protection to enrollees'' under routine use 19 and to ''insurers who are primary payers to Medicare'' under routine use number 22 will be combined and listed as proposed routine use number 6. Disclosures permitted under published routine use number 17 will be covered by proposed routine use number 10, which will permit the release of data to contractors and grantees for the purposes of combating fraud and abuse. Disclosures permitted under published routine use number 6 will be covered by proposed routine use number 11, which will permit the release of data to other Federal agencies for the purposes of combating fraud and abuse. We propose to renumber published routine use number 20 as proposed routine use number 1 and modify the language to clarify the circumstances for disclosure to contractors and consultants.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to properly pay Medicare insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services dealing through fiscal intermediaries or carriers, Quality Improvement Organizations (QIO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. § 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the agency related to this SOR, and combat fraud and abuse in certain Federally-funded health care programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 19, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Marianne Faulstich, Director, Division of Intermediary and Fiscal Systems, Business Systems Operating Group, Office of Information Services, CMS, Room N2–09–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7401.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified SOR

A. Statutory and Regulatory Basis for SOR

In 1988, CMS modified a SOR under the authority of sections 1816, 1862 (b) and 1874 of Title XVIII of the Social Security Act (the Act) (42 United States Code (USC) sections 1395 (h), 1395y (b), and 1395kk). Notice of the modification to this system, ''Intermediary Medicare Claims Records, System No. 09–70–0503'' was published in the **Federal Register** (FR) 53 FR 52806 (Dec, 29, 1988), an unnumbered routine use was added for the SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses that were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in electronic format, and Medicare secondary payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release IMCR information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of IMCR. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require IMCR information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including

proper reimbursement for services provided.

Treasury Department may require IMCR data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

USPS may require IMCR data for investigating alleged forgery or theft of reimbursement checks.

RRB requires IMCR information to enable them to assist in the implementation and maintenance of the Medicare program.

SSA requires IMCR data to enable them to assist in the implementation and maintenance of the Medicare program.

IRS may require IMCR data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act (the Act), for quality control studies, for determining eligibility of recipients of assistance under Titles IV and XIX of the Act, and for the complete administration of the Medicaid program. IMCR data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the IMCR data for review of unethical practices or non-professional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require IMCR information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require IMCR information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to IMCR information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, value added networks, and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require IMCR information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require IMCR information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

IMCR data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require IMCR information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The IMCR system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office of Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;

• Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;

• Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and

• Submitter class has read and write access to database objects, but no database administration privileges.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the IMCR system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

• User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

• Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.

• Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of IMCR. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: September 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0503

SYSTEM NAME:

Intermediary Medicare Claims Records (IMCR) System, HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at CMS Regional Offices, CMS Intermediaries, Social Security Field Offices, and at locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and Medicare secondary payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this SOR is given under the authority of sections 1816, 1862 (b) and 1874 of Title XVIII of the Social Security Act (42 United States Code (USC) sections 1395(h), 1395y (b), and 1395kk).

PURPOSE(S):

The primary purpose of the SOR is to properly pay Medicare insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services dealing through fiscal

intermediaries or carriers, Quality Improvement Organizations (QIO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this SOR, and combat fraud and abuse in certain Federally-funded health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3.To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee

of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's name, HICN, and assigned unique physician identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the IMCR system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Intermediary and Fiscal Systems, Business Systems Operations Group, Office of Information Services, CMS, 7500 Security Boulevard, Room N2–09–27, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, inquiries should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the CMS regional office, or write to the system manager listed above. The entity contacted will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 Code of Federal Regulations (CFR) 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is provided by the providers of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific tasks in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South Portland, ME 04106–6911.
Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.
Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.
Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.
Medicare Coordinator, Cooperativa, PO Box 363428, San Juan, PR 00936–3428.
Medicare Coordinator, Maryland B/C, PO Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.
Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.
Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.
Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.
Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.
Medicare Coordinator, Georgia B/C, PO Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.
Medicare Coordinator, Mississippi B/C B MS, PO Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.
Medicare Coordinator, North Carolina B/C, PO Box 2291, Durham, NC 27702–2291.
Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.
Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.
Medicare Coordinator, Anthem Insurance Co. (Anthm In), PO Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.
Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.
Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.
Medicare Coordinator, TrailBlazer, PO Box 660156, Dallas, TX 75266–0156.
Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.
Medicare Coordinator, Kansas B/C, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.
Medicare Coordinator, Nebraska B/C, PO Box 3248, Main PO Station, Omaha, NE 68180–0001.
Medicare Coordinator, Mutual of Omaha, PO Box 1602, Omaha, NE 68101.
Medicare Coordinator, Montana B/C, PO Box 5017, Great Falls DIV., Great Falls, MT 59403–5017.
Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.
Medicare Coordinator, Utah B/C, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.
Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.
Medicare Coordinator, Arizona B/C, PO Box 37700, Phoenix, AZ 85069.
Medicare Coordinator, UGS, PO Box 70000, Van Nuys, CA 91470–0000.
Medicare Coordinator, Regents BC, PO Box 8110 M/S D–4A, Portland, OR 97207–8110.
Medicare Coordinator, Premera BC, PO Box 2847, Seattle, WA 98111–2847.

IV. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.
Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.
Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.
Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.
Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.
Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.
Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.
Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.
Medicare Coordinator, Highmark, PO Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.
Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.
Medicare Coordinator, Trailblazer Health Enterprises, Virginia, PO Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.
Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.
Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.
Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.
Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.
Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.
Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.
Medicare Coordinator, Railraod Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.
Medicare Coordinator, Cahaba GBA, Jackson Miss, PO Box 22545, Jackson, MI 39225–2545.
Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.
Medicare Coordinator, Wisconsin Physicians Service, PO Box 8190, Madison, WI 53708–8190.
Medicare Coordinator, Nationwide Mutual Insurance Co., PO Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.
Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.
Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.
Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.
Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.
Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.
Medicare Coordinator, Kansas B/S, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.
Medicare Coordinator, Kansas B/S—NE, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.
Medicare Coordinator, Montana B/S, PO Box 4309, Helena, MT 59601.
Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.
Medicare Coordinator, Noridian Bcbsnd (CO), 730 N. Simms #100, Golden, CO 80401–4730.
Medicare Coordinator, Noridian Bcbsnd (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.
Medicare Coordinator, Utah B/S, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.
Medicare Coordinator, Transamerica Occidental, PO Box 54905, Los Angeles, CA 90054–4905.
Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.
Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.
Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.
Medicare Coordinator, DynCorp Electronic Data Systems (EDS, 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.
Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.
Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.
Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. PO Box 100282, Falls Church, VA.
Medicare Coordinator, California Medical Review, Inc. Integriguard Division Federal Sector Civil Group One Sansome Street, San Francisco, CA 94104–4448.
Medicare Coordinator, Computer Sciences Corporation Suite 600 3120 Timanus Lane, Baltimore, MD 21244.
Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.
Medicare Coordinator, TriCenturion, L.L.C., PO Box 100282, Columbia, SC 29202.

[FR Doc. 02–27338 Filed 10–28–02; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0456]

Determining Hospital Procedures for Opened-But-Unused, Single-Use Medical Devices; Request for Comments and Information; Correction

AGENCY: Food and Drug Administration, HHS

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 28, 2002 (67 FR 55269). The document announced a request for comments about current practices with respect to opened-but-unused, single-use medical devices. The document was inadvertently published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–27, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–21891, appearing on page 55269 in the **Federal Register** of Wednesday, August 28, 2002, the following correction is made:

1. On page 55269, in the third column, ''[Docket No. 00D–0053]'' is corrected to read ''[Docket No. 02N–0456]''.

Dated: October 21, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27413 Filed 10–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0461]

Antimicrobial Drug Development; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the Infectious Diseases Society of America (IDSA) and the Pharmaceutical Research and Manufacturers of America (PhRMA), regarding antimicrobial drug development. The public workshop is intended to provide information for and gain perspective from advocacy groups, interested health care providers, academia, and industry organizations on various aspects of antimicrobial drug development, including the selection of delta in noninferiority (equivalence) clinical trials, the need for newer antimicrobial agents for the treatment of resistant pathogens, and clinical trial design. The input from this public workshop will help in developing topics for further exploration.

Date and Time: The public workshop will be held on November 19 and 20, 2002, from 9 a.m. to 5 p.m.

Location: The public workshop will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD. Seating is limited and available only on a first-come, first-served basis. Please note there is very limited parking in the vicinity of 5630 Fishers Lane, but it is near the Twinbrook Metro station. Please bring picture identification in order to clear building security.

Contact Person: John H. Powers, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2350, e-mail: powersjoh@cder.fda.gov, or Leo Chan, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2350, e-mail: chanl@cder.fda.gov.

Registration: Preregistration is required. Send registration information (including name, title, firm name, address, telephone, and fax number) to Leo Chan (see the *Contact Person* section of this document) by November 12, 2002. There is no registration fee for the public workshop. Space is limited; therefore, interested parties are encouraged to register early.

Persons needing a sign language interpreter or other special accommodations should notify the contact person at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, cosponsored with IDSA and PhRMA, regarding antimicrobial drug development. On February 19 and 20, 2002, a public meeting of FDA's Anti-Infective Drugs Advisory Committee was held to discuss issues related to the selection of delta in noninferiority (equivalence) clinical trials and the development of antimicrobial agents for the treatment of resistant pathogens (67 FR 3726, January 25, 2002). This public workshop will further expand the discussion of both issues as well as focus on general considerations in designing clinical trials for antimicrobial products. Additional discussion topics include drug development for acute bacterial meningitis, acute exacerbation of chronic bronchitis, and hospital-acquired pneumonia. The input from this public workshop will help in developing topics for further exploration.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Transcripts of the public workshop will be available for review at the Dockets Management Branch Public Reading Room, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and on the Internet at http://www.fda.gov/ohrms/dockets/dockets/dockets.htm or you may request a transcript of the public workshop from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 20 working days after the public workshop, at a cost of 10 cents per page.

Dated: October 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27438 Filed 10–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA AIDS Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting is open to the public.

Name: HRSA AIDS Advisory Committee (HAAC).

Date and Time: November 21, 2002; 1:30 p.m.–5 p.m., November 22, 2002; 8:30 a.m.–3:30 p.m.

Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037, Telephone: (202) 293–3100.

Agenda: Agenda items for the meeting include a discussion of the involvement of Community and Migrant Health Centers in HIV care, HIV medical certification, HRSA restructuring, AIDS Drug Assistance Program issues, Native American issues, and HAAC

planning for reauthorization of the CARE Act.

For Further Information Contact: Anyone requiring further information should contact Shelley Gordon, HIV/AIDS Bureau, Parklawn Building, Room 16C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9684.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–27520 Filed 10–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Nucleic acid encoding mesothelin, a differentiation antigen present on mesothelium, mesotheliomas and ovarian cancers'' U.S. Patent 6,152,430, Issued November 28, 2000, and ''Mesothelium antigen and methods and kits for targeting it'' U.S. Patent 6,083,502, Issued July 4, 2000

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent 6,153,430: ''Nucleic acid encoding Mesothelin, a differentiation antigen present on mesothelium, mesotheliomas and ovarian cancers'' issued November 28th, 2000, and U.S. Patent 6,083,502: ''Mesothelium antigen and methods and kits for targeting it'' issued July 4th, 2000, to Cell Genesys, Inc., which is located in Foster City, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human gene therapy using peptides or antibody fragments for the treatment of cancer.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before December 30, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7056, x206; Facsimile: (301) 402–0220; and e-mail: *heftib@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license: will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

The technology claimed in the issued patent relates to mesothelin, which is associated with mesotheliomas and ovarian cancers. The invention includes uses for the amino acid and nucleic acid sequences for mesothelin, recombinant cells expressing it, methods for targeting and/or inhibiting the growth of cells bearing mesothelin, methods for detecting the antigen and its expression level as an indication of the presence of tumor cells, and kits for such detection.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 15, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–27517 Filed 10–28–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Modulating IL–13 Activity Using Mutated IL–13 Molecules that are Antagonists or Agonists of IL–13'', PCT Application PCT/US00/31044

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in PCT application PCT/US00/31044 , entitled ''Modulating IL–13 Activity Using Mutated IL–13 Molecules that are Antagonists or Agonists of IL–13'', which was filed on November 10, 2000 to NeoPharm, Incorporated which is located in Lake Forest, Illinois. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to therapy for asthma and other immunological disorders.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before December 30, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7056, x206; Facsimile: (301) 402–0220; and e-mail: heftib@od.nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license: will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

The technology claimed in the issued patent relates to mutated forms of IL–13, either agonists or antagonists, which have higher binding affinity for the IL–13 receptor than does wild-type IL–13. The application also claims therapeutic uses of these mutated forms of IL–13, and their use as targeting moieties.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 15, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–27518 Filed 10–28–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: ''Endotracheal Tube Using Leak Hole To Lower Resistance and Dead Space''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive license worldwide to practice the inventions embodied in: U.S. Application No. 09/967,903, filed September 28, 2001, entitled ''Endotracheal Tube Using Leak Hole to Lower Resistance and Dead Space'' to Vital Signs, Inc. of Totowa, New Jersey.

The United States of America is the assignee to the patent rights of these inventions. The field of use of the contemplated co-exclusive license may include all medical applications, and the other co-exclusive licensee has not yet been identified.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before December 30, 2002 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Dale D. Berkley, Ph.D., J.D. Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 223; Facsimile: (301) 402–0220; e-mail: *berkleyd@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The invention is a tracheal tube ventilation apparatus which, through the use of one or more tube leak holes or connecting tubes positioned in the wall of the endotracheal tube above the larynx, is able to efficiently rid the patient of expired gases and promote healthier breathing. A first stage of the apparatus has a smaller diameter such that it fits within the confined area of the lower trachea and the second stage has a larger diameter, which fits properly within the larger diameter of the patent's pharynx. The endotracheal tube is preferably wire reinforced and ultra-thin walled so as to reduce airway resistance. The invention substantially reduces endotracheal dead space and is expected to benefit those patients with early stage acute respiratory failure, and reduce or obviate the need for mechanical pulmonary ventilation in many patients.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice may be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 9, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–27519 Filed 10–28–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–44]

Notice of Proposed Information Collection: Comment Request; Computation of Surplus Cash Distributions and Residual Receipts and Funds Authorizations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3730 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Computation of Surplus Cash Distributions and Residual Receipts and Funds Authorizations.

OMB Control Number, if applicable: HUD–52537 & HUD–92466.

Description of the need for the information and proposed use: Pursuant to the Regulatory Agreement for Multifamily Housing insured mortgages, under Sections 207, 220, 221(d)(4), 231, 232, and 236, owners are required to adhere to certain guidelines regarding Surplus Cash and to establish a Residual Receipt Account. These receipts are completed and submitted to HUD by owners of insured multifamily projects. The information collected is used by HUD personnel, owners, and non-profit entities for the disbursement of funds.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 20,000 generating 20,000 annual responses; the frequency of response is annually; the estimated time to prepare the information collection is approximately 2 hours; and the estimated total number of annual burden hours is 40,000.

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 21, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–27417 Filed 10–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on November 18–19, 2002 is to convene the full Advisory Committee (appointed by Secretary Norton on April 1, 2002); and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 9 a.m., Monday, November 18, 2002 and 8:30 a.m., Tuesday, November 19, 2002.

ADDRESSES: Hamilton Crowne Plaza Hotel, The Sphinx Club at Almas Temple, 1315 K Street, NW., Washington, DC 20005. Meetings on both days will be held in the Oasis Room.

FOR FURTHER INFORMATION CONTACT: Kelsey Passe, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: October 23, 2002.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 02–27437 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Federal Regional Council Application, Nomination, and Interview Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We accept comments until December 30, 2002.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB for approval of the collection of information related to the recruitment of Federal Subsistence Advisory Council members. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title VIII of the Alaska National Interest Lands Conservation Act (16 USC 3101) designates the Departments of the Interior and Agriculture as the key agencies responsible for implementing the subsistence priority on Federal public lands for rural Alaska residents. These responsibilities include the establishment of Regional Advisory Councils with members from each region who are knowledgeable about the region and subsistence uses of the public lands. In order for the Federal Board to make recommendations to the Secretaries for membership on these Regional Councils, it is necessary to recruit and screen applicants. These three associated forms allow the Federal Subsistence Board to recruit applicants and to review their credentials in order to make recommendations to the Secretaries for appointment of members to the Regional Councils. One-third of the seats on the Regional Councils become vacant each year. Additional vacancies may occur due to resignations or deaths of sitting members.

Title: Federal Subsistence Regional Advisory Council Membership Application Form.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: The reporting burden is estimated to average 0.5 hours per respondent. With an estimated 120 applicants annually, the estimated Total Annual Burden hours is 60 hours.

Total Annual Responses: About 120 applications are expected to be submitted annually.

Federal Subsistence Regional Advisory Council Membership Application Form (use this form if you are applying for a seat on the council)

The Federal Subsistence Board is accepting applications through Month/Day/Year for membership on ten Federal Subsistence Regional Advisory Councils. The Regional Advisory Councils provide advice and

recommendations to the Board, concerning subsistence hunting, trapping and fishing issues on Federal public lands. XXXX appointments will be made in Year to fill expiring terms and seats vacated by resignation on the Regional Advisory Councils.

''The Regional Advisory Councils are the crucial link between subsistence users and the Federal Subsistence Board as their recommendations carry a great deal of weight in decisions regarding subsistence,'' says Mitch Demientieff, Chair of the Board.

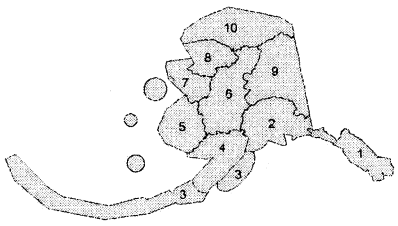
Criteria for Membership

- Resident of the region he/she wishes to represent
- Knowledge of fish and wildlife resources in the region
- Knowledge of subsistence uses, customs, and traditions in the region
- Knowledge of recreational, commercial, and other uses in the region
- Leadership and experience with local regional organizations
- Ability to communicate effectively
- Willing to travel to and attend Regional Advisory Council meetings at least two times each year (usually in October and February)
- Willing to occasionally attend Federal Subsistence Board meetings

Federal Subsistence Regions

Regional Advisory Councils represent the following geographic regions in Alaska:

Region 1	Southeast Alaska
Region 2	Southcentral Alaska
Region 3	Kodiak/Aleutians
Region 4	Bristol Bay
Region 5	Yukon-Kuskokwim Delta
Region 6	Western Interior
Region 7	Seward Peninsula
Region 8	Northwest Arctic
Region 9	Eastern Interior
Region 10	North Slope



Regional Advisory Council Membership

Regional Advisory Council members are appointed to 3-year terms. The Regional Advisory Councils meet at least twice a year. While no compensation is provided for this volunteer service, Regional Advisory Council members are reimbursed for travel-related expenses. Responsibilities of the Regional Councils include:

- Review and make recommendations to the Federal Subsistence Board on proposals for regulations, policies, management plans, and other subsistence related issues on Federal public lands within the region;
- Develop proposals pertaining to the subsistence harvest of fish and wildlife, and review proposals submitted by others;
- Encourage and promote local participation in the decision making process affecting subsistence harvests on Federal public lands;
- Make recommendations on customary and traditional use determinations of subsistence resources;
- Appoint members to national park subsistence resource commissions.

Schedule

February [day/year]

Deadline for submitting applications and nominations.

March–May

Applications will be reviewed by regional panels.

June

Federal Subsistence Board will review panel recommendations.

July–November

Secretaries of Interior and Agriculture will review recommendations and appoint members to the Regional Councils.

For More Information Please Call

Southeast Alaska Region: Bob Schroeder, Juneau, (800) 586–7895 or (907) 586–7895.

Southcentral Alaska Region: Ann Wilkinson, Anchorage, (800) 478–1456 or (907) 786–3888.

Kodiak/Aleutians Region: Michelle Chivers, Anchorage, (800) 478–1456 or (907) 786–3888.

Bristol Bay Region: Cliff Edenshaw, Anchorage, (800) 478–1456 or (907) 786–3888.

Yukon-Kuskokwim Delta Region: Alex Nick, Bethel, (800) 621–5804 or (907) 543–3151.

Western Interior Alaska Region: Vince Mathews, Fairbanks, (800) 267–3997 or (907) 456–0277.

Northwest Arctic Region: Helen Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

North Slope & Seward Peninsula Regions: Barb Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

Eastern Interior Alaska Region: Donald Mike, Anchorage, (800) 478–1456 or (907) 786–3888.

In accordance with the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. This information collection is authorized by the Alaska National Interest Lands Conservation Act and regulations promulgated thereunder. It is our policy not to use your name for any other purpose. The information that you provide will be used by the Federal Subsistence Board to make recommendations to the Secretary of the Interior for appointment of members of the Federal Subsistence Regional Advisory Councils. This information will be maintained in accordance with the Privacy Act, but may be released under a Freedom of Information Act request (5 U.S.C. 552). Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned clearance number 1018–xxxx. We estimate that it will take you about 20 minutes to respond to these questions. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop Room 222, Arlington Square, Washington, DC 20240, (1018–xxxx). Thank you.

OMB Clearance Number 1018–xxxx.
Expires: xx–xx–xxxx.

Federal Subsistence Regional Advisory Council Membership

Application Form (use this form if you are applying for a seat on the council)

Your name:
First Name

Middle Initial

Last Name

Your Mailing address:

Your Telephone numbers:
home:

work:

fax:

Email:

Where is your *primary* place of residence?

Please answer the following questions (use another page if necessary):

(1) Please describe your knowledge of fish and wildlife resources in the region.

(2) Please describe your knowledge of subsistence and customary and traditional uses of resources in the region.

(3) Please describe your knowledge of recreational, guiding, commercial and other uses of fish and wildlife resources in the region.

(4) Do you participate in meetings on fish and wildlife issues (*i.e.* Fish and Game Advisory Committees, Regional Advisory Councils, Marine Mammal Commissions, Caribou Working Groups, Subsistence Resource Commissions, Coastal Resource Service areas, Waterfowl Conservation Committees)? If so, please describe your involvement.

(5) Have you served in an official capacity on councils, boards, committees, or associations in the past few years? Please mention the role you served while working with these groups (*i.e.* Chair, Vice Chair, member).

(6) The seat you are applying for represents users throughout the region. How would you find out about fish and wildlife concerns people have and get information back to those people?

(7) Please describe your ability to communicate effectively with others.

(8) Do you use Federal lands for hunting, trapping, fishing, guiding, transporting, commercial fishing, gathering, or sharing of traditional knowledge or other use of fish and wildlife resources?

(9) Are you willing to travel to and attend Regional Advisory Council meetings at least two times each year? (Regional Advisory Council meetings are usually held in October and February and travel expenses are reimbursable) Yes___No___

(10) Are you willing to attend Federal Subsistence Board meetings occasionally? (Board meetings are usually held in May and December. Travel expenses are reimbursable) Yes___No___

Which user group will you represent as a member of the Regional Advisory Council? (Check ONE only!)

a. subsistence user

b. recreational/sport user

c. commercial fisherman

d. guide (hunting or fishing)

e. transporter/outfitter

f. other

Please describe your affiliation with this user group. You may include letters of endorsement from interest groups or local or statewide organizations, if you so desire.

Any additional comments you want to offer (attach additional sheets if needed).

Reference Contacts: Please include three references who can be contacted. You may also submit a letter of recommendation if you wish. Please provide the most current phone numbers available.

Name:

Organization:

Address:

Telephone Numbers:
Home:

Work:

Name:

Organization:

Address:

Telephone Numbers:
Home:

Work:

Name:

Organization:

Address:

Telephone Numbers:
Home:

Work:

I certify that, to the best of my knowledge, all statements are correct and complete.

Applicant Signature

Date

Please submit completed applications to: U.S. Fish and Wildlife Service, Federal Subsistence Board, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

Applications must be received by Month/Date/Year.

Federal Subsistence Regional Advisory Council Membership

Applications Will Be Accepted Through Month/Date/Year

Application Materials Are Enclosed!

Title: Federal Subsistence Regional Advisory Council Membership Nomination Form.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Local governments, Tribal organizations, and special interest groups.

Total Annual Burden Hours: The reporting burden is estimated to average 0.5 hours per respondent. With an estimated 50 nominations annually, the estimated Total Annual Burden Hours is 25 hours.

Total Annual Responses: About 50 nominations are expected to be submitted annually.

Federal Subsistence Regional Advisory Council Membership Nomination Form (for use when you are nominating someone else for a seat on the council)

The Federal Subsistence Board is accepting nominations and applications through Month/Day/Year for membership on ten Federal Subsistence Regional Advisory Councils. The Regional Councils provide advice and recommendations to the Board, concerning subsistence hunting, trapping and fishing issues on Federal public lands. XXXX appointments will be made in Year to fill expiring terms and seats vacated by resignation on the Regional Advisory Councils.

''The Regional Advisory Councils are the crucial link between subsistence users and the Federal Subsistence Board as their recommendations carry a great deal of weight in decisions regarding subsistence,'' says Mitch Demientieff, Chair of the Board.

Criteria for Membership

- Resident of the region he/she wishes to represent
- Knowledge of fish and wildlife resources in the region
- Knowledge of subsistence uses, customs, and traditions in the region
- Knowledge of recreational, commercial, and other uses in the region
- Leadership and experience with local regional organizations
- Ability to communicate effectively
- Willing to travel to and attend Regional Advisory Council meetings at least two times each year (usually in October and February)
- Willing to occasionally attend Federal Subsistence Board meetings

Federal Subsistence Regions

Regional Advisory Councils represent the following geographic regions in Alaska:

Region 1	Southeast Alaska
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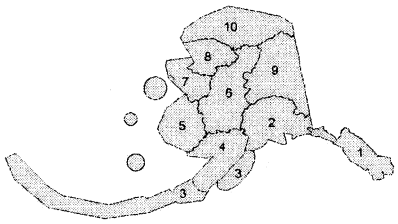
Region 4	Bristol Bay
Region 5	Yukon-Kuskokwim Delta
Region 6	Western Interior
Region 7	Seward Peninsula
Region 8	Northwest Arctic
Region 9	Eastern Interior
Region 10	North Slope



Regional Advisory Council Membership

Regional Advisory Council members are appointed to 3-year terms. The Regional Councils meet at least twice a year. While no compensation is provided for this volunteer service, Regional Council Members are reimbursed for travel-related expenses. Responsibilities of the Regional Councils include:

- Review and make recommendations to the Federal Subsistence Board on proposals for regulations, policies, management plans and other subsistence related issues on Federal public lands within the region;
- Develop proposals pertaining to the subsistence harvest of fish and wildlife, and review proposals submitted by others;
- Encourage and promote local participation in the decision making process affecting subsistence harvests on Federal public lands;
- Make recommendations on customary and traditional use determinations of subsistence resources;
- Appoint members to national park subsistence resource commissions.

Schedule

February [day/year]

Deadline for submitting applications and nominations.

March–May

Applications will be reviewed by regional panels.

June

Federal Subsistence Board will review panel recommendations.

July–November

Secretaries of Interior and Agriculture will review recommendations and appoint members to the Regional Councils.

For More Information Please Call

Southeast Alaska Region: Bob Schroeder, Juneau, (800) 586–7895, or (907) 586–7895.

Southcentral Alaska Region: Ann Wilkinson, Anchorage, (800) 478–1456 or (907) 786–3888.

Kodiak/Aleutians Region: Michelle Chivers, Anchorage, (800) 478–1456 or (907) 786–3888.

Bristol Bay Region: Cliff Edenshaw, Anchorage, (800) 478–1456 or (907) 786–3888.

Yukon-Kuskokwim Delta Region: Alex Nick, Bethel, (800) 621–5804 or (907) 543–3151.

Western Interior Alaska Region: Vince Mathews, Fairbanks, (800) 267–3997 or (907) 456–0277.

Northwest Arctic Region: Helen Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

North Slope & Seward Peninsula Regions: Barb Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

Eastern Interior Alaska Region: Donald Mike, Anchorage, (800) 478–1456 or (907) 786–3888.

In accordance with the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. This information collection is authorized by the Alaska National Interest Lands Conservation Act and regulations promulgated thereunder. It is our policy not to use your name for any other purpose. The information that you provide will be used by the Federal Subsistence Board to make recommendations to the Secretary of the Interior for appointment of members of the Federal Subsistence Regional Advisory Councils. This information will be maintained in accordance with the Privacy Act, but may be released under a Freedom of Information Act request (5 U.S.C. 552). Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned clearance number 1018–xxxx. We estimate that it will take you about 20 minutes to respond to these questions. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop Room 222, Arlington Square, Washington, DC 20240, (1018–xxxx). Thank you.

OMB Clearance Number 1018–xxxx.

Expires: xx–xx–xxxx.

Federal Subsistence Regional Advisory Council Membership

Nomination Form (for use when you are nominating someone else for a seat on the Council)

Name of the person you are nominating:

First Name

Middle Initial

Last Name

Nominee's Mailing address:

Nominee's Telephone numbers:
home:

work:

fax:

Email:

Where is the nominee's *primary* place of residence?

Please answer the following questions (use another page if necessary):

(1) Please describe the nominee's knowledge of fish and wildlife resources in the region.

(2) Please describe the nominee's knowledge of subsistence and customary and traditional uses of resources in the region.

(3) Please describe the nominee's knowledge of recreational, guiding, commercial and other uses of fish and wildlife resources in the region.

(4) Does the nominee participate in meetings on fish and wildlife issues (*i.e.* Fish and Game Advisory Committees, Regional Advisory Councils, Marine Mammal Commissions, Caribou Working Groups, Subsistence Resource Commissions, Coastal Resource Service areas, Waterfowl Conservation Committees)? If so, please describe the nominee's involvement.

(5) Has the nominee served in an official capacity on councils, boards, committees, or associations in the past few years? Please mention the role you served while working with these groups (*i.e.* Chair, Vice Chair, member).

(6) The seat you are nominating someone for represents users throughout the region. How would the nominee find out about fish and wildlife concerns people have and get information back to those people?

(7) Please describe the nominee's ability to communicate effectively with others.

(8) Does the nominee use Federal lands for hunting, trapping, fishing, guiding, transporting, commercial fishing, gathering, or sharing of traditional knowledge or other use of fish and wildlife resources?

(9) Is the nominee willing to travel to and attend Regional Advisory Council meetings at least two times each year? (Regional Advisory Council meetings are usually held in October and February and travel expenses are reimbursable) Yes___ No___

(10) Is the nominee willing to attend Federal Subsistence Board meetings occasionally? (Board meetings are

usually held in May and December. Travel expenses are reimbursable) Yes___ No___

Which user group will the nominee represent as a member of the Regional Advisory Council? (Check ONE only!)
a. subsistence user _____
b. recreational/sport user _____
g. commercial fisherman _____
h. guide (hunting or fishing) _____
i. transporter/outfitter _____
j. other _____

Any additional comments you want to offer (attach additional sheets if needed).

Reference Contacts: Please include two references who can be contacted. You may also submit a letter of recommendation if you wish. Please provide the most current phone numbers available.
Your name: _____
Organization: _____
Address: _____
Telephone Numbers:
Home: _____
Work: _____
Name: _____
Organization: _____
Address: _____
Telephone Numbers:
Home: _____
Work: _____
Name: _____
Organization: _____
Address: _____
Telephone Numbers:
Home: _____
Work: _____

I certify that, to the best of my knowledge, all statements are correct and complete.
Signature _____
Date _____
Your Title: _____
Organization: _____

Please submit completed applications to: U.S. Fish and Wildlife Service, Federal Subsistence Board, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

Applications must be received by Month/Date/Year

Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503.

Federal Subsistence Regional Advisory Council Membership

Nominations will Be Accepted Through Month/Date/Year.

Nomination Materials are Enclosed!

Title: Regional Advisory Council Member Evaluation—Candidate Interview Form.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: The reporting burden is estimated to average 0.5 hours per interview. With an estimated 120 applicants and 5 interviews conducted per applicant, the estimated Total Annual Burden hours is 300 hours.

Total Annual Responses: About 600 interviews are expected to be conducted annually.

Regional Advisory Council Member Evaluation Candidate Interview Form

Panelist:

_____

Applicant:

_____

Date:

_____

Information from the questions that follow will help the Federal Subsistence Board develop a list of recommended appointments to the Federal Subsistence Regional Advisory Council in your region. All candidates must be a resident of the region he or she is representing. Resource management challenges and allocation controversies are particularly intense in many parts of Alaska, so wider representation is needed to ensure that the Councils serve as forums for constructive dialogue and problem solving. As a result, Councils have designated seats: 70 percent for representatives of subsistence interests and 30 percent for representatives of recreational/sport, and commercial interests. Careful attention needs to be paid to the affiliation of the candidate.

Several factors that will be used to evaluate individual qualifications, include:

- Knowledge of fish and wildlife resources in the region
- Knowledge of subsistence uses, customs, and traditions in the region
- Knowledge of recreational, commercial and other uses in the region
- Leadership and experience with local regional organizations
- Ability to communicate effectively
- Willing to travel to and attend Regional Council meetings at least two times each year (usually in September/October and February/March)
- Willing to occasionally attend Federal Subsistence Board meetings

In accordance with the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. This information collection is authorized by the Alaska National Interest Lands Conservation Act and regulations promulgated thereunder. It is our policy not to use your name for any other purpose. The information that you provide will be used by the Federal Subsistence Board to make recommendations to the Secretary of the Interior for appointment of members of the Federal Subsistence Regional Advisory Councils. This information will be maintained in accordance with the Privacy Act, but may be released under a Freedom of Information Act request (5 U.S.C. 552). Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned clearance number 1018-xxxx. We estimate that it will take you about 20 minutes to respond to these questions. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop Room 222, Arlington Square, Washington, DC 20240, (1018-xxxx). Thank you.

OMB Clearance Number 1018-xxxx.

Expires: xx-xx-xxxx.

Key Contacts.

Panels are required to consult with key regional contacts such as regional and local governments; tribes and corporations; fish and game advisory committees; commercial fisheries organizations; recreational, hunting, and fishing organizations; ADF&G; and all pertinent Federal field offices.

Panelists need to document contacts with key contacts in the region on the table below.

Organization, Government, or Agency	Person Contacted	Date

Questions to be directed to both the Applicant/Nominee and the key contacts/references:

1. Please describe your (the applicant's/nominee's) knowledge of fish and wildlife resources in the region.

2. Please describe your (the applicant's/nominee's) knowledge of subsistence and customary and

traditional uses of resources in your region.

3. Please describe your (the applicant's/nominee's) knowledge of recreational, guiding, commercial, and other uses of fish and wildlife resources in the region.

4. Do you (Does the applicant/nominee) participate in meetings on fish and wildlife resource issues (*i.e.* Fish and Game Advisory Committees, Regional Advisory Councils, Marine Mammal Commissions, Caribou Working Groups, Subsistence Resource Commissions, Coastal Resource Service Areas, Waterfowl Conservation Committees)? If so, please describe the involvement.

5. Have you (Has the applicant/nominee) served in an official capacity on councils, boards, committees, or associations in the past few years? Please mention the role you (he/she) served while working with these groups (*i.e.* Chair, Vice Chair, member).

6. The Regional Council member represents users throughout the region. How would you (the applicant/nominee) find out about fish and wildlife concerns people have and get information back to those people?

7. Please describe your (the applicant's/nominee's) ability to communicate effectively with others.

8. Do you (Does the applicant/nominee) use Federal public lands for hunting, trapping, fishing, guiding, transporting, commercial fishing, gathering, or sharing of traditional knowledge or other use of fish or wildlife resources?

9. Describe your (the applicant's/nominee's) affiliation with the user group that you (he/she) will represent. Are there formal endorsements from this group? If so, please describe them.

Questions for the Applicant/Nominee only:

What are some fish and wildlife issues you would like to see addressed through the Regional Advisory Council over the next three years?

Why do you want to serve on the Regional Advisory Council?

Regional Council members serve as volunteers but are reimbursed for travel costs such as lodging, food, transportation, and other related expenses. There is no compensation for lost wages or job activities missed as a result of doing Regional Advisory Council business.

Are you willing to serve as a volunteer in this way? Yes_____ No_____

Can you be available to travel to meetings lasting 2–4 days within the region at least twice a year? Yes_____ No_____

We invite comments concerning this proposed information collection on:

(1) Whether the collection of information is necessary for the proper selection of Regional Council members, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: October 23, 2002.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–27429 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Habitat Conservation Plan for the Northern Spotted Owl, Napa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) has received an application for an incidental take permit from Terra Springs, LLC (the ''applicant'') for the northern spotted owl (*Strix occidentalis caurina*) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant addresses the potential for ''take'' of the threatened northern spotted owl associated with timber harvest and conversion of timberlands to vineyards within a 76 acre area in Napa County (the ''covered lands''). These activities (the ''covered activities'') are those associated with conversion of 22 acres of forest lands to vineyard and with any subsequent removal of commercial conifer trees from the remainder of the covered lands. A conservation program to minimize and mitigate for the covered activities would be implemented as described in the Terra Springs Low Effect Habitat Conservation Plan (Plan), which would be implemented by the applicant, and which includes management in perpetuity of 41 acres of the parcel as nesting/roosting quality habitat for the northern spotted owl.

We request comments on the permit application, the Plan, and on the preliminary determination that the Plan qualifies as a ''Low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in the Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments should be received on or before November 29, 2002.

ADDRESSES: Comments should be addressed to the Project Leader, Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521. Written comments may be sent by facsimile to (707) 822–8411.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey, Team Leader, Habitat Conservation Planning Team, at the Arcata Fish and Wildlife Office; telephone: (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, Plan, and EAS should contact the Service by telephone at (707) 822–7201 or by letter to the Arcata Fish and Wildlife Office. Copies of these documents also are available for public inspection during regular business hours at the Arcata Fish and Wildlife Office.

Background Information

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The applicant is seeking a permit for take of the threatened northern spotted owl (*Strix occidentalis caurina*) during the life of the permit. The duration of the permit is 30 years.

The Terra Springs LLC site, the covered lands, comprises two adjacent parcels, totaling 76 acres, and is located about 4 miles west of the city of Saint Helena, on the western edge of the Napa Valley between 1,800 and 2,000 feet

above sea level. The site is located within a fragmented landscape of conifer, hardwood, and mixed conifer-hardwood forests; agricultural lands including vineyards, orchards, and grazing lands; and scattered wineries, residences, and bed and breakfast facilities. The Terra Springs LLC property currently includes an existing vineyard, orchard, and winery, in addition to approximately 65 acres of forest lands dominated by Douglas-fir trees.

The proposed Terra Springs LLC project includes a Timberland Conversion and Timber Harvest Plan prepared under California Forest Practices Rules. The project would convert 22 acres of forest to vineyard and would also include removal of commercial conifer trees from the remaining acres of forest, consistent with providing 41 acres of nesting/roosting-quality habitat for northern spotted owls.

Northern spotted owls have large home ranges and inhabit lands containing older forest types, or the ecological equivalent, to meet their biological needs. The minimum size of the home range for northern spotted owls that meets their biological needs varies from province to province. Within the Klamath and Coast Provinces of California (which include the proposed Plan area), a 1.3 mile radius area around a nest site or activity center is considered representative of the home range for the species for management purposes. The Terra Springs LLC site is within the home range of one northern spotted owl activity center, site number NSO NP033. This activity center is located approximately 1.1 miles from the Terra Springs site. Thus, forest within the Plan area is considered habitat for the owls associated with the activity center.

The applicant proposes to avoid, minimize, and mitigate the effects of the project on the northern spotted owl by implementing the Plan. Under the Plan the applicant proposes to manage 41 acres of the 76 acres property as forested, nesting/roosting habitat for the northern spotted owl. The applicant will also place a deed restriction on the parcel requiring management of these 41 acres as northern spotted owl habitat, in perpetuity. Currently 30 acres of the 41 acres are nesting/roosting habitat quality. The remaining 11 acres, currently of foraging habitat quality, will be managed to develop into the higher quality nesting/roosting habitat. In addition to mitigation, the Plan also includes measures to minimize take of the northern spotted owl.

No critical habitat for any listed species occurs on the project site.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to avoid, minimize and mitigate impacts of the project on the northern spotted owl. Three other alternatives are considered in the Plan. Under the No Action Alternative, no permit would be issued. Under the Off-site Mitigation Alternative, roosting and foraging habitat would be purchased and used to replace habitat affected by the proposed activities. Under the Higher Intensive Use Alternative, more intensive land uses than are currently in place or proposed in the Plan would be sought.

The Service has made a preliminary determination that the Plan qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Therefore, the Service has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, appendix 1 and 516 DM 6, appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. We will consider public comments in making our final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to Terra Springs, LLC for the incidental take of the northern spotted owl from conversion of 22 acres of forest lands to vineyard and any subsequent removal of commercial conifer trees from the remainder of the covered lands. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: October 22, 2002.

Miel R. Corbett,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–27424 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–023–02–1410–HY–011L–241A; F–14836–EE]

Public Easement Closure; Prohibition of All Activities

AGENCY: Northern Field Office, Bureau of Land Management, Fairbanks, Alaska.

ACTION: Notice to the public of a temporary closure of a public easement [17(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. Sec. 1616(b)] administered by the Northern Field Office, Bureau of Land Management, Alaska.

SUMMARY: This notice closes a 17(b) easement identified as Easement Identification Number 1 C5, E. The easement is located east of Barrow, Alaska, from Niksiirak to Plover Point. This closure notice is necessary to protect humans from an unprecedented number of polar bears in the area. The welfare of the polar bear population around Barrow, Alaska also necessitates this closure action.

Discussion of this closure has taken place between BLM, the North Slope Borough, Ukpeagvik Inupiat Corporation, and the Native Village of Barrow Inupiat Traditional Government.

DATES: This closure is effective September 23, 2002, and will be in effect until May 1, 2003, unless revoked earlier by the Authorized Officer.

FOR FURTHER INFORMATION: Additional information concerning the closure may be obtained from Craig McCaa, Public Affairs, BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska 99709–3844. Mr. McCaa may be reached at (907) 474–2231 or at 1–800–437–7021, x2231, or at *Craig_McCaa@ak.blm.gov.*

SUPPLEMENTARY INFORMATION:

Closure Order

1. *Authority:* 43 Code of Federal Regulations (CFR) 8364.1.

2. Closure: The following described lands are closed to all activity.

Lands Affected

Sec. 12 & 13, T. 23 N., R. 18 W., and Sec. 3, 4, 5, 7, 8, 10, 18, 32 and 33, T. 23 N., R. 17 W., of the Umiat Meridian, approximately 1 acre.

Dated: September 24, 2002.

Susan M. Will,

Associate Field Manager, Northern Field Office, Bureau of Land Management.

[FR Doc. 02–27479 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–02–2640–HO–UTZA]

Notice of Temporary Closure of the Manning Canyon Area

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of temporary closure of the Manning Canyon Area.

SUMMARY: Notice is hereby given that all access by the public to the roads and surrounding public lands in Manning Canyon, Utah County, will be temporarily closed to the general public beginning October 1, 2002 and continuing through October 1, 2006. The public lands, which total approximately 4,110 total acres, that are affected by this closure are as follows:

Manning Canyon Hazardous Material Cleanup Site

T. 6.S., R. 3 W., SLM,
Section 13, W½,
Section 14, all,
Section 15, all,
Section 22, E½, all public lands east of and including the north-south road,
Section 23, all,
Section 24, S½NE¼, W½,
Section 25, W½, SE¼, those lands which BLM holds interest in pursuant to Manning Canyon remediation contract,
Section 26, all public lands east of the West Manning Canyon Road,
Section 27, NE¼NE¼NE¼, north of the West Manning Canyon Road,
Section 36, N½NW¼ north and east of the West Manning Canyon Road and north of the old railroad grade.

FOR FURTHER INFORMATION CONTACT: Tim Ingwell, BLM Hazardous Material Specialist, Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah, 84119; (801)–977–4300, or email at *Tim_Ingwell@blm.gov.*

SUPPLEMENTARY INFORMATION: This closure to public access and use will serve to protect the safety and health of individuals and groups visiting and utilizing the network of Off-Highway Vehicle (OHV) trails, visiting, hiking, hunting, and camping within the Fivemile Pass OHV area during the cleanup of the hazardous material in Manning Canyon. The hazardous materials consist of numerous mine tailings piles that contain large concentrations of heavy metals, such as lead and arsenic, and exceed the recommended parts per million concentrations. These tailings are also a potential threat to ground water contamination to water sources used by local residents. A map depicting the closure area is available for public inspection at the Bureau of Land Management, Salt Lake Field Office.

The authority for establishing this restriction is found at 43 CFR 8364.1(a). This restriction does not apply to:

(1) Any federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

(3) Any federal, state, local, or contract law enforcement officer, while in the performance of their official duties, or while enforcing this closure notice.

Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360–0.7 as further defined in 18 U.S.C. 3571.

Dated: September 25, 2002.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 02–27477 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–03–1430–BJ]

Notice of Filing of Plats of Survey; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

Indian Meridian, Oklahoma:

T. 7 N., R 21 W., approved September 27, 2002, for Group 65 OK;
T. 10 N., R 10 E., approved September 30, 2002, for Group 88 OK;
T. 25 N., R 24 E., approved September 04, 2002, for Group 72 OK;

New Mexico Principal Meridian, New Mexico:

T. 9 S., R 14 E., approved September 26, 2002, for Group 928 NM;
Tierra Amarilla Grant, approved September 10, 2002, for Group 904 NM;
Felipe Gutierres or Town of Bernalillo Grant, approved September 23, 2002, for Group 994 NM;

6th Principal Meridian, Kansas

T. 33 S., R 40 W., approved September 30, 2002, for Group 25 KS;

Protraction Diagrams for:

T. 19 N., R 11 E., approved September 30, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 7, 2002.

Steve Beyerlein,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 02–27490 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–75209]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: This action corrects errors in the acreage and land descriptions in the notice published as FR Doc. 02–11433, 67 FR 30960, May 8, 2002.

On page 30960, second column, line 6 from the bottom of the column, which reads ''2,303.61 acres of public lands from'' is hereby corrected to read ''2,313.92 acres of public lands from''.

On page 30960, third column, line 29 from the top of the column, which reads ''Sec. 4, lots 9 to 14, inclusive, lots 16 to 20,'' is hereby corrected to read ''Sec. 4, lots 9 to 14, inclusive, lots 16 and 17,''.

On page 30960, third column, line 35 from the top of the column, which reads ''Sec. 9, lots 1 to 4 inclusive,'' is hereby corrected to read ''Sec. 9, lots 1 to 3 inclusive,''.

On page 30960, third column, line 37 from the top of the column, which reads ''S½NE¼SW¼NE¼, S½SE¼SW¼NE¼,'' hereby corrected to read ''S½NE¼SW¼NE¼, N½SE¼SW¼NE¼,''.

On page 30960, third column, line 17 from the bottom of the column, which reads ''Sec. 16, N½NW¼SW¼, SE¼NE¼NE¼,'' is hereby corrected to read ''Sec. 16, SE¼NE¼NE¼,''.

On page 30960, third column, line 15 from the bottom of the column, which reads ''SE¼NE¼NE¼, and E½SE¼NE¼.'' is hereby corrected to read ''SW¼NE¼NE¼, and E½SE¼NE¼.''.

On page 30960, third column, line 13 from the bottom of the column, which reads ''2,303.61 acres in Nye and Mineral'' is hereby corrected to read ''2,313.92 acres in Nye and Mineral''.

Dated: September 24, 2002.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 02–27478 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region; Notice of Termination of an Environmental Impact Statement, Intent To Prepare an Environmental Assessment, and To Hold Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L.91–109 section 102(c)) supportive Council on Environmental Quality regulations, Department of the Interior and National Park Service (NPS) guidance documents, the NPS is terminating an Environmental Impact Statement (EIS) as noticed in the **Federal Register**, March 13, 2002 (11363) for a special resource study of an Upper Housatonic Valley National Heritage Area, authorized by Public Law 106–470. It was apparent that an EIS was not necessary as there was little or no potential for significant impact to the human environment of the study area. Coincident with this termination notice, and pursuant to the same authorization and guidance, the NPS is hereby noticing its intent to prepare an Environmental Assessment (EA) for the Upper Housatonic Valley study area which encompasses a watershed containing eight municipalities in Litchfield County, Connecticut and eighteen municipalities in Berkshire County, Massachusetts. The purpose of the study and EA is to determine if this area can become a National Heritage Area. If the National Park Service determines that the Upper Housatonic Valley has an assemblage of natural, historic, and cultural resources that together represent distinctive aspects of American heritage worthy of recognition, conservation, interpretation, and continuing use, Congress could designate it as a National Heritage Area. The study will identify alternative interpretive theme options and partnership arrangements to manage the heritage area. NPS would not administer or manage such an area. The alternatives will describe: Proposed heritage area boundaries; evaluations of significance, suitability, and feasibility; characteristics of the proposed management entity; participation of State and local governments and private and public organizations; anticipated levels of public use; as well as consider economic and social benefits of public use as the principal aspect of potential impact to the human environment within and about the study area.

The National Park Service will hold public meetings in December, 2002 (Date, Time, and Place to be announced coincident with noticing the availability of the study and EA in draft) which will provide opportunity for public comment on the study and EA. The purpose of these meetings is to obtain both written and verbal comments concerning the future use, stewardship and protective management of an Upper Housatonic Valley National Heritage Area.

Additional information about the study and EA is available from James O'Connell, Study Project Manager, National Park Service Boston Support Office, 15 State Street, Boston, Massachusetts 02109–3572, (617) 223–5222. Those persons who wish to comment verbally or in writing, or who require further information, should contact Mr. O'Connell.

After public and interagency review of the document in draft, comments will be considered, the EA portion of the study will be accordingly finalized and a NEPA closure document in the form of a Finding of No Significant Impact will be prepared, so that the study can be finalized in a report to Congress. Should any unresolvable controversy arise or significant environmental impacts unknown at this time be realized, the steps of closure and study report completion could be forestalled by necessity to process a full environmental impact statement.

Sandra Corbett,

Superintendent, Boston Support Office.

[FR Doc. 02–27245 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–749 (Review)]

Persulfates From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

On September 6, 2002, the Commission determined that the domestic interested party group

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

response to its notice of institution (67 FR 38333, June 3, 2002) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. The Commission transmitted its determination in this review to the Secretary of Commerce on October 31, 2002. The views of the Commission are contained in USITC Publication 3555 (October 2002), entitled Persulfates From China: Investigation No. 731–TA–749 (Review).

Issued: October 23, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27436 Filed 10–28–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–473]

Certain Video Game Games Systems and Components Thereof; Notice of Commission Decision Not to Review an Initial Determination Finding the Sole Respondent in Default, and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') finding respondent Ultimate Game Club (''UGC'') in default. In connection with final disposition of the investigation, the Commission is requesting briefing on remedy, the public interest, and the appropriate bond during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON–LINE) at *http://dockets.usitc.gov/eol/public.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on July 19, 2002, based on a complaint against UGC filed by Microsoft Corporation of Redmond, Washington. 67 FR 48949 (July 26, 2002). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain video game systems, accessories, or components by reason of infringement of the claims of U.S. Design Patent No. D452,282 and U.S. Design Patent No. D452,534.

UGC did not file responses to the complaint, the notice of investigation, or Microsoft's discovery requests. On August 24, 2002, Microsoft moved pursuant to section 337(g) and Commission rule 210.16(b) for issuance of an order directing UGC to show cause why it should not be found in default. Microsoft's motion also requested that, upon UGC's failure to show cause, an ID be issued finding UGC in default, and that a limited exclusion order and cease and desist order be issued immediately against UGC. On August 23, 2002, the Commission investigative attorney (IA) filed a response supporting the request for a show cause order. On September 5, 2002, the presiding ALJ issued Order No. 4, which ordered UGC to show cause by September 18, 2002, why it should not be found in default. UGC did not respond to the order to show cause.

On September 27, 2002, the IA filed a letter supporting a finding of default against UGC. On October 9, 2002, the ALJ issued an ID (Order No. 5) finding UGC in default. No petitions for review of the ID were filed. Under Commission rule 210.16(b)(3), 19 CFR 210.16(b)(3), UGC is deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in this investigation. Section 337(g)(1), 19 USC 1337(g)(1) and Commission rule 210.16 (c), 19 CFR 210.16(c), authorize the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, UGC has been found in default and Microsoft has requested issuance of a limited exclusion order that would deny entry to certain video game systems, accessories, or components imported by UGC. Microsoft also requests issuance of a cease and desist order. If the Commission decides to issue remedial orders against UGC, it must consider what the amount of the bond should be during the Presidential review period. In connection with the final disposition of this investigation, the potential remedies are a cease and desist order and a limited exclusion order that could result in the exclusion from entry into the United States of certain video game systems, accessories, or components imported by UGC. Accordingly, the Commission is interested in receiving written submissions that address whether either or both such orders should be issued. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion). If the Commission contemplates a remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that remedial orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. If the Commission issues a limited exclusion order, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in

[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements is available from the Office of the Secretary and at the Commission's Web site.

receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed limited exclusion orders must be filed no later than close of business on [the date that is two weeks after issuance of this notice]. Reply submissions, if any, must be filed no later than the close of business on [the date that is three weeks after issuance of this notice]. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.16 and 210.42 of the Commission's rules of practice and procedure, 19 CFR 210.16 and 210.42.

By order of the Commission.
Issued: October 23, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27435 Filed 10–28–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection, Financial Status Report (SF 269A).

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 163, page 54479 on August 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 29, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of information collection:* New collection.

2. *The title of the form/collection:* Financial Status Report (SF 269A).

3. *The agency number, if any, and the applicable component of the department sponsoring the collection:* Non-applicable. The Department of Justice, Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by grant recipients who were awarded grants by the Department of Justice, Office of Justice Programs. It is used as an aid for grant recipients to report the status of their expenditures.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents are 11,292, and the estimated time to complete the form is one and a half hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 67,752 hours annual burden associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: October 23, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–27416 Filed 10–28–02; 8:45 am]

BILLING CODE 4410–18–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, November 7, 2002, and Friday, November 8, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW.,

Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on November 7, and at 9: a.m. on November 8.

Topics for discussion include: Medicare in the context of the federal budget; emergency department use and beneficiary access to care; beneficiary access to post-hospital care—results of a focus group with hospital discharge planners; how Medicare makes coverage decisions; payment for ambulatory surgery and other services provided in multiple settings; examining growth in the volume of physician services; M+C payment areas—exploring alternatives; choice of SNF services in Medicare+Choice; PPS for inpatient psychiatric facilities; expanded transfer policy for hospital inpatient services; and workplans for assessing the adequacy of payments for outpatient dialysis, skilled nursing facilities, and home health services.

Agenda will be mailed on November 30, 2002. The full agenda will be available on the Commission's website (*www.MedPAC.gov.*)

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW.,; Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 02–27445 Filed 10–28–02; 8:45 am]

BILLING CODE 6820—BW—M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Advisory Commission on Drug Free Communities

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Advisory Commission on Drug Free Communities will be held on November 13, 2002, at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., 7th Floor, Washington, DC. The meeting will commence at 9 a.m. on Wednesday, November 13, 2002, and adjourn at 5 p.m. The agenda will include: the solicitation for Mentoring Grants; the National Antidrug Coalition Institute; the Marijuana and Community Drug Prevention Initiatives of the National Youth Anti-Drug Media Campaign Coalition Building Initiative; and remarks by ONDCP Director, John P. Walters. There will be an opportunity for public comment from 4 p.m. until 4:30 p.m. on Wednesday, November 13, 2002. Members of the public who wish to attend the meeting and/or make public comment should contact Sigrid Melus at (202) 395–6700 to arrange building access.

FOR FURTHER INFORMATION CONTACT: Linda V. Priebe, (202) 395–6622.

Dated: October 23, 2002.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 02–27415 Filed 10–28–02; 8:45 am]

BILLING CODE 3180–02–P≤

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 7, Application for License to Export Nuclear Equipment and Material.

2. *Current OMB approval number:* 3150–0027.

3. *How often the collection is required:* On occasion; for each separate request for a specific export license and for exports of incidental radioactive material using existing general licenses.

4. *Who is required or asked to report:* Any person in the U.S. who wishes to export: (a) Nuclear equipment and material subject to the requirements of a specific license, (b) radioactive waste subject to the requirements of a specific license, and (c) incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. *The number of annual respondents:* 70.

6. *The number of hours needed annually to complete the requirement or request:* 191 hours (190.8).

7. *Abstract:* Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization or radioactive waste requiring a specific authorization ordinarily should file an application for a license on NRC Form 7, except that certain submittals should be filed by letter. The application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

A completed NRC Form 7 must also be filed by any person in the U.S. wishing to use existing NRC general licenses for the export of incidental radioactive material before the export takes place (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms). The form is reviewed by the NRC to ensure that the Agency is informed before the fact of these kinds of shipments and to allow NRC to inform other interested parties, as appropriate, including import control authorities in interested foreign countries.

Submit, by December 30, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 22nd day of October, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–27480 Filed 10–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice; Meeting

DATE: Weeks of October 28, November 4, 11, 18, 25, December 2, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 28, 2002

Wednesday, October 30, 2002

2 p.m. Discussion of security issues (Closed—Ex. 1 & 9)

Thursday, October 31, 2002

9:25 a.m. Affirmation session (Public meeting), (If needed)

9:30 a.m. Briefing on EEO program (Public meeting) (Contact: Irene Little, 301–415–7380)

2:30 p.m. Briefing on proposed rulemaking to add new section 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors'' (Public meeting) (Contact: Eileen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Friday November 1, 2002

9 a.m. Discussion of security issues (Closed—Ex. 1)

Week of November 4, 2002—Tentative

There are no meetings scheduled for the week of November 4, 2002.

Week of November 11, 2002—Tentative

Thursday, November 14, 2002

2 p.m. Discussion of management issues (Closed—Ex. 2)

Week of November 18, 2002—Tentative

Thursday, November 21, 2002

2 p.m. Discussion of security issues (Closed—Ex. 1)

Week of November 25, 2002—Tentative

There are no meetings scheduled for the week of November 25, 2002.

Week of December 2, 2002—Tentative

Wednesday December 4, 2002

10 a.m. Briefing on decommissioning bankruptcy issues (Closed—Ex. 4 & 9)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 24, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–27591 Filed 10–25–02; 12:31 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, October 4, 2002, through October 17, 2002. The last biweekly notice was published on October 15, 2002 (67 FR 63687).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Rgister a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville

Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 29, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: September 6, 2002.

Description of amendments request: The amendments would replace the peak linear heat safety limit, in Technical Specification (TS) 2.1.1.2, ''Reactor Core SLs [Safety Limits],'' by a peak fuel centerline temperature safety limit to have a safety limit in the TSs that would not be exceeded during normal operation or anticipated operational occurrences (AOOs), in accordance with Section 50.36(c)(1)(ii)(A) of Title 10 of the Code of Federal Regulations (10 CFR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not require any physical change to plant systems, structures, or components nor does it require any change in systems or plant operations. The proposed change does not result in any change to safety analysis methods or results. The change to establish peak fuel centerline temperature as the Safety Limit is consistent with the PVNGS Units 1, 2 and 3 licensing bases for ensuring that the fuel design limits are met. Operations and analysis will continue to be in accordance with the PVNGS Units 1, 2 and 3 licensing bases. The peak fuel centerline temperature is the basis for protecting the fuel and is consistent with the safety analysis. [The peak linear heat rate and peak fuel centerline temperature safety limits are not initiators of accidents.]

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The PVNGS Units 1, 2 and 3 Updated Final Safety Analysis Report (UFSAR) Chapter 15 accident analyses for AOOs where the peak linear heat rate may exceed the existing Safety Limit of 21 kW/ft are the control element assembly (CEA) Withdrawal events at Subcritical and Low Power conditions. The analyses for these AOOs indicate that the peak fuel centerline temperature is not exceeded. The existing safety analyses, which remain unchanged, do not affect any accident initiators that would create a new accident. [The peak linear heat rate and peak fuel centerline temperature safety limits are not initiators of accidents.]

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not result in any change to safety analysis methods or results. Therefore, by changing the Safety Limit from peak linear heat rate to peak fuel centerline temperature the margins as established in the PVNGS Units 1, 2 and 3 Technical Specifications and UFSAR are unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, APS [Arizona Public Service Company] concludes that the activities associated with the proposed amendment[s] presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: September 20, 2002.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.9.5, Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level, for Unit Nos. 1 and 2 to add two notes to allow operational changes in the Shutdown Cooling System to support operations and testing. The changes would allow the SDC pumps to be deenergized for less than or equal to 15 minutes when switching from one train to another. The second change would allow one SDC loop to be inoperable for up to 2 hours for surveillance testing, provided that the other loop was operable and in operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The system affected by this proposed amendment is the Shutdown Cooling (SDC) System. This system mitigates the consequences of a boron dilution event and removes decay heat from the Reactor Coolant System when the unit is in Mode 6. This proposed amendment revises the Technical Specification to allow the SDC pumps to be deenergized for less than or equal to 15 minutes to allow swapping from one operating train to another, and would allow one SDC loop to be inoperable for up to two hours for surveillance testing. Because this system is used for the mitigation of an accident, it is not an accident initiator. Therefore, the probability of an accident previously evaluated is not increased.

The only design basis accident considered in this Mode is a boron dilution event. Consideration is also given to a loss of decay heat removal in this Mode as well. Both of these conditions are evaluated in the Updated Final Safety Analysis Report (UFSAR). The evaluations consider operation of the SDC system to mitigate these conditions. Removing this system from service for a limited amount of time, with other operational restrictions, limits the consequences to those already assumed in the UFSAR. Thus, no increase in offsite dose occurs under this conditions. Therefore, the consequences of an accident previously evaluated have not increased.

Therefore, the probability or consequences of an accident previously evaluated have not significantly increased.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed changes do not involve a significant change in the operation of the plant and no new accident initiation mechanism is created by the proposed changes. The SDC System is not being altered by this amendment request. No substantial changes are made in the way in which the SDC System is operated. The only change made would allow both SDC pumps to be

deenergized to swap operating trains, and one SDC inoperable for less than two hours to allow for surveillance testing. Since the SDC System is an accident mitigating system only, changes in when this system is needed to operate cannot create a new [kind] of accident.

Therefore, the possibility of a new or different [kind] of accident from any previously evaluated is not created.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety provided by the SDC System is to provide boration control and to remove decay and sensible heat from the Reactor Coolant System as described in the UFSAR. Removal of system components from service as described above, and with limitations in place to prevent boron dilution and loss of decay and sensible heat removal, does not significantly impact the margin of safety. The SDC System will continue to be able to provide its safety function under this conditions. Operators will continue to have adequate time to respond to any off-normal events. Removing the system from service, for a limited period of time, with other operational restrictions limits the consequences to those already assumed in the UFSAR. Therefore, no reduction in [a] margin of safety has occurred because the event results in the UFSAR are not changed by operation in the proposed conditions.

Therefore, the proposed changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: August 26, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for diesel fuel oil for the plant's onsite diesel-generator power sources. The proposed changes would allow the use of an optional water and sediment content test, would relocate the specific version of certain American Society for Testing and Materials (ASTM) references to licensee controlled documents, would add several new ASTM references, and would relocate the requirement for a 10-year diesel fuel oil tank inspection and cleaning to licensee controlled documents. The licensee stated that the changes are consistent with the Standard Technical Specification Travelers (TSTF) 374, Revision 0 and TSTF 2, Revision 1. Associated changes are also proposed for the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the change contained in this proposed amendment against the 10 CFR 50.92 (c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed changes relocate the specific American Society for Testing and Materials (ASTM) Standard references from the Administrative Controls Section of Technical Specifications (TS) to a licensee-controlled document. Since any changes of the licensee-controlled document will be evaluated to the requirements of 10 CFR 50.59, ''Changes, tests, and experiments,'' no increase in the probability or consequences of an accident previously evaluated is involved. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to the storage tanks has expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The Bases for SR 3.8.3.3 (CNS) and 3.8.3.2 (MNS) are revised to indicate that the API gravity is tested in accordance with ASTM D1298 or D287.

Relocating the specific ASTM Standard references from the TS to a licensee-controlled document, allowing a water and sediment test to be performed to establish the acceptability of new fuel oil, and revising the TS Bases will not affect or degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

In addition Surveillance Requirements (SR) 3.8.3.5 for McGuire and 3.8.3.6 for Catawba are revised to remove the requirement for a 10-year tank inspection and cleaning. This requirement will be moved to a licensee-controlled document. Any changes of the licensee-controlled document will be evaluated to the requirements of 10CFR 50.59 ''Changes, tests, and experiments,''.

This change will not affect or degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained.

The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated.

Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

The proposed changes relocate the specific ASTM Standard references from the Administrative Controls Section of TS to a licensee-controlled document. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes revise Bases B 3.8.3 to reference the current specific ASTM standards. The Bases for SRs 3.8.3.3 (CNS) and 3.8.3.2 (MNS) are revised to indicate that the API gravity is tested in accordance with ASTM D1298 or D287.

In addition Surveillance Requirements (SR) 3.8.3.5 for McGuire and 3.8.3.6 for Catawba are revised to remove the requirement for a 10-year tank inspection and cleaning. This requirement will be moved to a licensee-controlled document. Any changes of the licensee-controlled document will be evaluated to the requirements of 10CFR50.59 ''Changes, tests, and experiments,''.

The changes do not involve a physical alteration to the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis or licensing basis. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

The proposed changes relocate the specific ASTM Standard references from the Administrative Control Section of TS to a licensee-controlled document. Instituting the proposed changes will continue to ensure the use of the current applicable ASTM

Standards to evaluate the quality of both new and stored fuel oil designated for use in the emergency diesels. The detail associated with the specific ASTM Standard references is not required to be in the TS to provide adequate protection of the public health and safety, since the TS still retains the requirement for compliance with the applicable ASTM standard. Changes to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. Should it be determined that future changes involve a potential reduction in a margin of safety, NRC review and approval would be necessary prior to the implementation of the changes. This approach provides an effective level of regulatory control and provides for a more appropriate change control process.

The ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to the addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes revise Bases B 3.8.3 to allow reference to the current ASTM standard. The Bases for SR 3.8.3.3 is revised to indicate that the API gravity is tested in accordance with ASTM D1298 or D287. The level of safety of facility operation is unaffected by the proposed changes since there is no change in the intent of the TS requirements of assuring fuel oil is of the appropriate quality for emergency DG use.

In addition Surveillance Requirements (SR) 3.8.3.5 for McGuire and 3.8.3.6 for Catawba are revised to remove the requirement for a 10-year tank inspection and cleaning. This requirement will be moved to a licensee-controlled document. Any changes of the licensee-controlled document will be evaluated to the requirements of 10CFR50.59 ''Changes, tests, and experiments''. The level of safety of the facility operation is unaffected by the proposed changes since there is no change in the intent of the SR to clean and inspect the fuel tanks.

Therefore, the proposed changes listed above do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 15, 2001, as supplemented by letter dated August 27, 2002.

Description of amendment request: The proposed amendment request provides additional information to support a modification to Technical Specification 3.4.7 and limits Reactor Coolant System activity permitted by the ACTION statement to 60 microcuries per gram (μCi/gm) at all power levels. The letdown line break accident analysis in the Final Safety Analysis Report is also changed to reflect revised dose consequences. This notice supercedes the biweekly **Federal Register** notice dated November 28, 2001 (66 FR 59504), based on the original application dated October 15, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change to the Technical Specifications (TS) conservatively limits Reactor Coolant System (RCS) activity permitted by Action Statement 3.4.7.a to 60 μCi/gm at all reactor power levels. The proposed change to the Final Safety Analysis Report (FSAR) Section 15.6.3.1 revises the letdown line break accident analyses.

The probability of a previously evaluated accident is not affected by this change because the pre-existing iodine spike is not an accident initiator and the new letdown line break accident analysis does not affect any plant Structure, Systems, or Component (SSC) but merely determines the consequences of the previously evaluated accident.

This TS change is conservative in that it will reduce the accident consequences for events occurring at lower power levels. The new letdown line break accident analysis meets the original Safety Evaluation Report (SER) and the current Standard Review Plan (SRP) acceptance criteria of a small fraction of the 10 CFR [Part] 100 limits.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will the operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The probability of a new or different accident is not affected by this change because the new letdown line break analysis does not affect any plant Structure, Systems, or Component but merely determines the consequences of the previously evaluated accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will the operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The TS change is more limiting in that it will reduce the accident consequences for events occurring at lower power levels.

The new letdown line break accident analysis, assuming one operating charging pump, meets the original SER and current SRP acceptance criteria of a small fraction of the 10 CFR [Part] 100 limits. This single pump analysis provides a suitable licensing basis analysis and has sufficient conservatism to accommodate two and three pump operating scenarios that may exist during the operating cycle.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: September 27, 2002.

Description of amendment request: The proposed amendment changes Appendix B, ''Environmental Protection Plan (Non-Radiological),'' of the license by removing a parenthetical reference to a superseded section of 10 CFR 51.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes a reference to a superseded section of 10 CFR 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' found in the non-radiological Environmental Protection Plans (EPPs) for Byron Station, LaSalle County Station and Quad Cities Nuclear Power Station, Units 1 and 2. The EPP (Non-Radiological) is Appendix B to the Facility Operating License. The change is administrative in nature. No physical changes to the facilities will result from the proposed change. The initial conditions and methodologies used in accident analyses remain unchanged. The

proposed change does not revise or alter the design assumptions for systems or components used to mitigate the consequences of accidents. Thus, accident analyses results are not impacted by this proposed change.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change deletes a reference to a superseded section of 10 CFR 51.5. The change is administrative in nature. No physical or operational changes to the facilities will result from the proposed change.

The proposed change does not affect the design or operation of any system, structure, or component (SSC) in the plant. The safety functions of the related SSCs are not changed in any manner, nor is the reliability of any SSC reduced. The change does not affect the manner by which the facility is operated and does not change any facility, structure, system, or component. No new or different type of equipment will be installed by this proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and has no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The change does not affect any plant safety parameters or setpoints. The proposed change deletes an inaccurate reference to a section of 10 CFR 51 that has been superseded. No physical or operational changes to the facility will result from the proposed changes.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: January 16, 2002.

Description of amendment request: The amendment would make administrative, editorial, and format (including repagination) changes to the technical specification (TS) Bases index and the Administrative Control section of TSs. Specifically, the amendments would relocate the TS Bases page listings from the TS index to a TS Bases index, and remove certain duplicative administrative requirements from Section 6, ''Administrative Controls,'' of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed administrative changes to the TS index and to Section 6 of the TSs do not result in changes being made to structures, systems, or components (SSCs), or to event initiators or precursors. Also, the proposed changes do not impact the design of plant systems such that previously analyzed SSCs would now be more likely to fail. The initiating conditions and assumptions for accidents described in the Updated Final Safety Analysis Report (UFSAR) remain as previously analyzed. Thus, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The previously analyzed SSCs are unaffected by the proposed changes and continue to provide assurance that they are capable of performing their intended design function in mitigating the effects of design basis accidents (DBAs). As such, the consequences of accidents previously evaluated in the UFSAR will not be increased and no additional radiological source terms are generated. Therefore, there will be no reduction in the capability of those SSCs in limiting the radiological consequences of previously evaluated accidents and reasonable assurance that there is no undue risk to the health and safety of the public will continue to be provided. Thus, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed administrative changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed administrative changes do not involve physical changes to analyzed SSCs or changes to the modes of plant operation defined in the technical specification. The proposed changes do not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor do they alter the design or adversely affect operation of any plant systems. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

The proposed administrative changes do not cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new or different mode of failure has been created and no new or different equipment performance requirements are imposed for accident mitigation. As such, the proposed changes have no effect on previously evaluated accidents.

Therefore, the proposed administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed administrative changes do not affect any previously evaluated accident. The proposed changes do not adversely affect the TS requirements and will continue to ensure that the necessary plant equipment is operable in the plant conditions where these systems are required to operate to mitigate a DBA as described in the analyses presented in the UFSAR. Thus, the proposed administrative, editorial, and format changes do not affect plant safety.

Therefore, the proposed administrative changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: July 23, 2002.

Description of amendment request: The proposed amendment would revise the Unit 2 reactor coolant system (RCS) pressure-temperature curves in Technical Specification (TS) Figures 3.4–2 and 3.4–3 and associated TS Bases. The revised curves will bound operation of the unit for the remainder of its current license duration and bound operation with planned license amendments to increase the power level at which the unit is allowed to operate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The proposed change will revise the RCS pressure-temperature curves to bound operation of the reactor for up to 32 EFPY at a power level of up to 3800 MW for the current fuel cycle and beyond, to reflect new fluence analysis methodology, to reflect the use of ASME [American Society of Mechanical Engineers] Code Case N–641, to include boltup limits, and to no longer include instrument uncertainty margins.

The proposed change will not result in physical changes to structures, systems, or components (SSCs), or to event initiators or precursors. The proposed change will not affect the ability of personnel to control RCS [Reactor Coolant System] pressure at low temperatures and, thereby, ensure the integrity of the RCPB [Reactor Coolant Pressure Boundary]. Use of ASME Code Case N–641 will be approved by the NRC through approval of a Donald C. Cook Nuclear Plant-specific exemption to requirements in 10 CFR 50.60(a) and 10 CFR 50, Appendix G. Therefore, the proposed revision to the RCS pressure-temperature curve changes will have been determined in accordance with NRC accepted methodologies. These methodologies provide adequate assurance that the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes, and provide an acceptable level of protection against brittle failure. Additionally, the proposed changes will not impact the design or operation of plant systems such that previously analyzed SSCs will be more likely to fail. The initiating conditions and assumptions for accidents described in the UFSAR will remain as previously analyzed. Therefore, the proposed changes will not involve a significant increase in the probability of an accident previously evaluated.

Consequences of an Accident Previously Evaluated

The proposed change does not reduce the ability of any SSC to limit the radiological consequences of accidents described in the UFSAR. The proposed change will not alter any assumptions made in the analysis of radiological consequences of previously evaluated accidents, nor does it affect the ability to mitigate these consequences. No new or different radiological source terms will be generated as a result of the proposed change. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

The format changes will improve the appearance of the affected pages but will not affect any requirements. In summary, the probability of occurrence and the consequences of an accident previously evaluated will not be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not result in physical changes to SSCs. The proposed change will not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor will it alter the design of any plant systems. The proposed change solely involves RCS pressure-temperature limits. The types of potential accidents associated with these limits have been previously identified and evaluated. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or single failures will be introduced as a result of the proposed changes. No new or different modes of failure will be created. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed RCS pressure-temperature curves will continue to provide adequate margins of protection for the RCPB. The proposed changes have been determined, through supporting analyses, to be in accordance with the methodologies and criteria set forth in the applicable regulations, or in accordance with technically adequate alternatives. Compliance with these methodologies provides adequate margins of safety and ensures that the RCPB will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events as described in the UFSAR. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not significantly reduce the margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power Company] I&M has concluded that the proposed changes involve no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: September 30, 2002.

Description of amendment request: The proposed amendment requests permission to change Kewaunee Nuclear Power Plant (KNPP) Facility Operating License DRP–43 to use an upgraded computer code for design basis accident containment integrity analyses. KNPP is currently licensed to use code for Generation of Thermal-Hydraulic Information for Containment (GOTHIC) version 6.0a. The proposed amendment requests to use GOTHIC 7.0p2 (GOTHIC 7).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Accident analyses affected by GOTHIC have each been evaluated and found to show good agreement between the GOTHIC 7 analysis and the current analysis of record (AOR). Safety analysis results using GOTHIC 7 are shown to satisfy all applicable design and safety analysis acceptance criteria. Since GOTHIC 7 conforms to design bases and its results are bounded by the existing safety analyses, its use within limits of the bounding accident analyses will not cause an increase in the probability or consequences of an accident previously evaluated. Adherence to safety analysis acceptance criteria prevents use of GOTHIC 7 from creating new challenges to components and systems that could adversely affect their ability to mitigate accident consequence or diminish integrity of any fission product barrier.

Thus, the requested upgrade to GOTHIC 7 with [mist diffusion layer] MDL modeling option will not increase probability or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Upgrade to GOTHIC 7 is a change in analysis methods applied to Kewaunee [design basis accident] DBA. Analysis methods are not accident initiators. GOTHIC 7 will be applied in the same manner currently licensed and it is consistent with current plant design bases and licensed accident analysis methodologies. It does not adversely affect any fission product barrier, nor does it alter the safety function of safety related systems, structures, and components depended upon for accident prevention or mitigation. Equipment important to safety will continue to function within design. As demonstrated by the [Numerical

Applications Inc.] NAI report, GOTHIC 7 yields a representation of expected plant response for affected design basis accidents that is more accurate but remains conservative. GOTHIC 7 predicted results for affected DBA remain bounded by the limiting analyses of record.

Thus, the requested upgrade to GOTHIC 7 does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

Upgrade to GOTHIC 7 affects Kewaunee design basis [loss of coolant accident] LOCA and [main steamline break] MSLB DBA containment analyses. The results predicted by GOTHIC 7 for these DBA analyses remain within limiting design basis accidents of record. GOTHIC 7 accuracy and conservatism in this application has been verified through benchmark analyses against the current analyses of record, validated against recognized standard data, and found to be appropriate for application to Kewaunee DBA. Safety analysis acceptance criteria are satisfied and adherence to safety analysis acceptance criteria using GOTHIC 7 assures that Technical Specification limits will not be exceeded during normal operation.

Thus, upgrade to GOTHIC 7 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 19, 2002.

Description of amendment request: The proposed amendment would delete Surveillance Requirement (SR) 4.6.B.2, ''Primary System Boundary—Reactor Vessel Temperature and Pressure,'' from the Monticello Technical Specifications (TSs) on the basis of the licensee's commitment to (1) relocate the current requirements to the Updated Safety Analysis Report (USAR) and (2) implement the Boiling Water Reactor Vessel and Internals Program Integrated Surveillance Program as approved by the Nuclear Regulatory Commission (NRC) in a letter dated February 1, 2002. SR 4.6.B.2 currently states: ''Test specimens representing the reactor vessel, base weld, and weld heat affected zone metal shall be installed in the reactor vessel adjacent to the vessel wall at the core midplane level. The material sample program shall conform to ASTM [American Society for Testing and Materials] E 185–66.'' The licensee would also make related changes to the TS Bases 3.6/4.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates the requirement of the TS Surveillance Requirement to a Licensee controlled document and implements an integrated surveillance program that has been evaluated by the NRC staff as meeting the requirements of paragraph III.C of Appendix H to 10 CFR [Part] 50. The proposed change of relocating a TS Surveillance Requirement to the Monticello USAR and implementing an integrated surveillance program is not considered a precursor or initiator of an accident previously evaluated. The proposed change does not impact current plant operations or the design function of any structure, system or component. Consequently, the proposed change does not significantly increase the probability of any accident previously evaluated.

The proposed change provides the same assurance of Reactor Pressure Vessel integrity as has always been assured. The relocation of the TS Surveillance Requirement provides an acceptable method for implementing the integrated surveillance program which was evaluated by the NRC staff as meeting the requirements of 10 CFR [Part] 50, Appendix H, paragraph III.C. The relocation of the TS Surveillance or the implementation of an integrated surveillance program is not an input or consideration in any accident previously evaluated, thus the proposed change will not increase the probability of any such accident occurring. The proposed amendment does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it affect any assumptions or conditions in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, operation of the facility in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. No equipment interfaces are modified and no changes to any equipment function or the method of operating the equipment are being made. The proposed change, to relocate the TS Surveillance and implement an integrated surveillance program, maintains an equivalent level of RPV [reactor pressure vessel] material surveillance and does not introduce any new accident initiators. The proposed change will not change the design, configuration or operation of the plant.

Therefore, operation of the facility in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

The proposed amendment has been evaluated as providing an acceptable alternative to the plant-specific RPV material surveillance program that meets the requirements of the regulations for RPV material surveillance. The proposed change does not exceed or alter a design basis or safety limit. The change relocates a TS Surveillance Requirement and implements an integrated surveillance program and as such does not significantly reduce the margin of safety.

Therefore, operation of the facility in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: L. Raghavan.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: September 23, 2002.

Description of amendment request: The proposed amendments would change the SSES 1 and 2 Technical Specifications (TSs) by revising limiting condition for operation (LCO) 3.6.2.3 to add a new Condition B, which permits both residual heat removal (RHR) suppression pool cooling subsystems to be inoperable for 8 hours, rather than immediately initiating a unit shutdown. By making this change, the licensee is incorporating Technical Specifications Task Force change traveler number 230 into its TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change relaxes the Required Actions of [LCO 3.6.2.3] by allowing 8 hours to restore one RHR suppression pool cooling subsystem to OPERABLE status when both subsystems have been determined to be inoperable. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated. The proposed 8 hour Completion Time provides some time to restore required subsystem(s) to OPERABLE status, yet is short enough that operating an additional 8 hours is not a significant risk. Consequently, this change in Required Actions does not significantly increase the probability of occurrence of any accident previously evaluated. The Required Actions in the proposed change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition, considering the operability status of the RHR Suppression Pool Cooling System and the capability of minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical modification or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The Required Actions and associated Completion Times in the proposed change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in a margin of safety. The proposed change has been evaluated to minimize the risk of continued operation with both RHR suppression pool cooling subsystems inoperable. The operability status of the RHR Suppression Pool Cooling System, a reasonable time for repair or replacement of required features, and the low probability of a design basis accident occurring during the repair period have been considered in the evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed change would revise the Technical Specifications to delete the primary containment isolation valves and instrumentation associated with the permanent removal of the reactor vessel head spray piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed changes to Technical Specification Tables 3.3.2–1, 3.3.7.4–2, 3.4.3.2–1, and 3.6.3–1 do not involve a change in structures, systems, or components that would affect the probability or consequences of any accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report.

The proposed changes involve eliminating piping and valves associated with the reactor head spray. The reactor head spray system was initially provided to cool down the steam dryer and separator during shutdown. The head spray system is not credited for the prevention or mitigation of any accident. Therefore, neither the offsite or control room radiological consequences are affected. The head spray piping removal and addition of a bolted flange on the reactor coolant pressure boundary enhances plant safety by eliminating a source of pipe whip and potential leakage. In addition, the drywell penetration will be capped and welded closed. This will maintain primary containment integrity and will be periodically tested in conjunction with the containment integrated leak rate test.

Therefore, as discussed above, this modification does not involve a significant increase in the probability or consequences from any accident previously analyzed.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed changes to Technical Specification Tables 3.3.2–1, 3.3.7.4–2, 3.4.3.2–1, and 3.6.3–1 do not involve a change in structures, systems, or components that would create a new or different kind of accident from any accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report.

The proposed change to eliminate the head spray piping and the addition of a bolted flange on the reactor coolant pressure boundary enhances plant safety by eliminating a source of pipe whip and potential leakage. In addition, the drywell penetration will be capped and welded closed. This will maintain primary containment integrity and will be tested in conjunction with the containment integrated leak rate test.

Therefore, as discussed above, this modification does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in [a] margin of safety?

Response: No.

The proposed change to delete the head spray valves from Tables 3.3.2-1, 3.3.7.4–2, 3.4.3.2–1, and 3.6.3–1 does not reduce any margin of safety as defined in the Technical Specifications or Bases. The bolted flange that will be installed on the head spray penetration will maintain the integrity of the reactor coolant pressure boundary. This flange would then be tested as part of the reactor pressure vessel hydrostatic test. In addition, the drywell penetration will be capped and welded closed. This will maintain primary containment integrity and will be tested as part of the containment integrated leak rate test.

Accordingly, based on the above, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Andersen, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 7, 2001.

Description of amendment request: The proposed amendments would remove license condition 2.C.3.f from the Unit 1 operating license and license condition 2.C.4 from the Unit 2 operating license, and replace them with a commitment in Section 9.1.4.2.2.5 of the Updated Final Safety Analysis Report (UFSAR). Specifically, license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NPF–8, respectively, require NRC approval of the lifting devices which attach the spent fuel cask to the crane prior to use of the spent fuel cask crane for the purpose of moving

spent fuel casks. Subsequent to issuance of FOLs NPF–2 and NPF–8, the NRC issued NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' which endorsed the use of ANSI N14.6 for the design and inspection of special lift devises thereby eliminating the need for license conditions 2.C.3.f and 2.C.4. Accordingly, SNC proposes that license conditions 2.C.3.f and 2.C.4 be removed from FOLs NPF–2 and NPF–8, respectively, and replaced with a commitment in the FNP UFSAR to ANSI N14.6 for the design, fabrication, testing, and quality assurance requirements associated with the spent fuel cask lift device.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change replaces license conditions 2.C.3.f and2.C.4 to FOLs NPF–2 and NPF–8, respectively, with a commitment in the FNP Updated Final Safety Analysis Report (UFSAR) to the requirements of ANSI N14.6, as clarified by NUREG–0612, for the design, fabrication, testing, maintenance, and quality assurance requirements applicable to the spent fuel cask special lift device. The proposed change does not involve a physical change to or require new or different operability requirements for plant systems, structures, or components. NUREG–0612, Control of Heavy Loads at Nuclear Power Plants, provides methods acceptable to the NRC for assuring the safe handling of heavy loads. NUREG–0612 endorses the use of ANSI N14.6 for the design, fabrication, testing, maintenance, and quality assurance requirements applicable to special lifting devices used to handle heavy loads in the proximity of safe shutdown equipment and irradiated spent fuel, thereby eliminating the need for license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NPF–8, respectively. Accordingly, removal of license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NFP–8, respectively, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change replaces license conditions 2.C.3.f and 2.C.4 from FOLs NPF–2 and NPF–8, respectively, with a commitment in the FNP UFSAR to the requirements of ANSI N14.6, as clarified by NUREG–0612, for the design, fabrication, testing, maintenance, and quality assurance requirements applicable to the spent fuel cask special lift device. The proposed change does not involve: (1) A physical change to plant systems, structures or components; or (2) require new or different operability requirements for plant systems, structures, or components. SNC's commitment to the guidance provided in ANSI N14.6, as clarified by NUREG–0612, provides assurance that the spent fuel cask special lift device, in conjunction with the use of the single-failure proof spent fuel cask crane, will preclude the possibility of a cask drop accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety?

The proposed change does not involve a physical change to the plant or impact the operability requirements of systems, structures, or components considered important to safety. As stated above, the use of ANSI N14.6, as clarified by NUREG–0612, has been endorsed by the NRC in NUREG–0612. The proposed change replaces license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NPF–8, respectively, with a commitment in the FNP UFSAR to the requirements of ANSI N14.6, as clarified by NUREG–0612, for the design, fabrication, testing, maintenance, and quality assurance requirements for the spent fuel cask crane special lift device. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear (SQN) Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: March 29, 2002 (TSC 02–02) as supplemented by a letter dated October 10, 2002.

Description of amendment request: The proposed amendment deletes several of the Unit 1 Technical Specification (TS) surveillance requirements (SR) contained in TS 3/4.4.5, ''Steam Generators'' (SGs), associated with the voltage-based SG alternative repair criteria (ARC). In addition the proposed changes would delete License Condition 2.C.9.d which references commitment letters associated with SG inspection activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Tennessee Valley Authority's [TVA's] proposed TS amendment does not compromise limits associated with SG tube integrity. TVA's proposed change removes existing SG tube plugging criteria (*i.e.*, ARC) from the TS and reestablishes the standard TS criteria (40 percent through-wall criteria). This change is inherently more conservative.

The proposed revision does not alter plant equipment, test methods or operating practices. The proposed change continues to provide controls for safe operation of SQN SGs within the required limits. The proposed change does not contribute to events or assumptions associated with postulated design basis accidents (*i.e.*, SG tube rupture). The proposed change does not affect operator indicators or actions required to diagnose or mitigate a SG tube rupture accident. The proposed revisions continue to maintain the required safety functions. Accordingly, the probability of an accident or the consequences of an accident previously evaluated is not increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TVA's proposed amendment removes existing repair criteria and incorporates the more conservative TS limit for SG tube plugging (*i.e.*, plug tubes with degradation depths equal to or greater than 40 percent through-wall). This change will not give rise to new failure modes. The failure of a SG tube to maintain leakage integrity during operation is an analyzed event in the SQN Updated Final Safety Analysis Report. Accordingly, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

TVA's proposed TS amendment is conservative with respect to the margin of safety. The margin of safety is preserved through ensuring structural integrity and leakage integrity of the SG tubes.

TVA's proposed change to remove ARC from the TS does not compromise structural integrity or leakage integrity of SG tubes. The proposed change invokes the standard TS tube plugging criteria limit (40 percent through-wall criteria) which is inherently more conservative.

The proposed change does not affect the plant conditions, setpoints, or safety limits that could result in precursors to accidents or degrade accident mitigation systems. Plant system safety functions are not altered by the proposed change. Consequently, the proposed TS revisions does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 6, 2002 (TS 00–14).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Units 1 and 2 Technical Specification (TS) 3/4.4.9.1, ''Pressure/Temperature [P–T] Limits, Reactor Coolant System'' and TS 3/4.4.12, ''Low Temperature Overpressure Protection [LTOP] Systems.'' The proposed amendment provides two changes to the these specifications as described below:

1. The proposed change relocates the information provided in these TSs into a pressure temperature limit report (PTLR) format in accordance with U.S. Nuclear Regulatory Commission (NRC) Generic Letter (GL) 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits.''

2. The proposed change also upgrades these TSs to the standard TS requirements for Westinghouse plants (NUREG–1431, Revision 2). In addition, the Tennessee Valley Authority (TVA) proposed a change to SQN TS 3/4.4.9.2, ''Pressurizer,'' to relocate the requirements of this TS into the SQN Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision does not affect plant equipment, test methods or operating practices. The modification to SQN TSs is consistent with the Standard Technical Specifications for Westinghouse Plants and continues to provide controls for safe operation within the required limits. The revised specifications provide appropriate administrative controls for the RCS [reactor coolant system] P–T limits and LTOP setpoints within the PTLR for future revisions as needed. The proposed changes do not contribute to events or assumptions associated with postulated design basis accidents (DBA). The proposed revisions continue to maintain the required safety functions. Accordingly, the probability of an accident or the consequences of an accident previously evaluated is not increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions are not the result of changes to plant equipment, test methods, or operating practices. The proposed revision to the SQN RCS P–T limits, and LTOP setpoints continues to ensure that conservative fracture toughness margins are maintained to protect against reactor pressure vessel failure and overpressure conditions. The modified P–T limits and LTOP setpoints are based on NRC approved methodology in conjunction with alternative methods provided in ASME Code Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME [American Society of Mechanical Engineers] Section XI, Division 1'' and WCAP–15315, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR [pressurized water reactor] and BWR [boiling water reactor] Plants.''

The proposed changes to incorporate the PTLR format is administrative in nature and provide controls for maintaining RCS P–T limits and LTOP setpoints for future revisions as needed.

The reactor vessel P–T limits and LTOP setpoints are operational limits and are not considered to be contributors to the generation of postulated accidents. The safety functions of the associated systems remain unchanged and do not affect the assumptions of DBAs. The operational limits and setpoints continue to be governed within the TSs/PTLR. Accordingly, the proposed changes do not create the possibility of a new or different kind of accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

TVA's proposed TS amendment provides revised reactor pressure vessel P–T limits and LTOP setpoints that are within the design capabilities of the RCS Safety Structures, Systems and Components (SSC) and pressure control systems. The limits are based on conservative design margins that ensure that plant operation is within the design capacity of the reactor vessel materials. Accordingly, the function of the RCS to provide a fission product barrier is not compromised.

TVA's proposed change to include revised P–T and LTOP limits does not result in a change to system design features. The proposed change does not affect plant conditions that result in precursors to accidents or cause degradation of accident mitigation systems. The plant system safety functions are not altered by the proposed change.

The proposed changes to the P–T limits and LTOP setpoints change the calculations and method from that described in the current TS Bases to one based on ASME Code Case N–640 and WCAP–15315. The effect of this change is to allow plant operation with different limits while continuing to retain conservative margins for assuring integrity of the reactor vessel and the RCS. Consequently, the proposed TS revisions do not significantly reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 9, 2002.

Brief description of amendment: The proposed amendment would revise the Technical Specifications to remove the cycle-specific allowances on (1) Rod insertion limits during individual rod position indicator channel calibrations and (2) rod position indicator channel accuracy for operation at or below 50 percent power. The proposed amendment also would revise the control rod indicated misalignment limits.

Date of publication of individual notice in **Federal Register:** October 7, 2002 (67 FR 62500).

Expiration date of individual notice: November 6, 2002.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 1, 2002.

Brief description of amendments: The amendments revise the licensing basis as described in the Updated Final Safety Analysis Report (UFSAR) to allow lifting heavier loads with the reactor building crane during the Unit 1 refueling outage beginning in November 2002.

Date of publication of individual notice in **Federal Register:** October 4, 2002 (67 FR 62270).

Expiration date of individual notice: November 4, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 11, 2001, as supplemented on June 27 and September 19, 2002.

Brief description of amendment: The amendment revised the Technical Specifications, Section 3.9, ''Refueling,'' and its corresponding bases to permit the continuation of core alterations during refueling operations with the refueling interlocks inoperable by providing alternate actions which will preserve the intended design function of the inoperable interlocks.

Date of Issuance: October 10, 2002.

Effective date: October 10, 2002, and shall be implemented within 30 days of issuance.

Amendment No.: 234.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10008). The June 27 and September 19, 2002, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of application for amendment: March 13, 2002, as supplemented May 10, August 14, September 5, September 23, and October 4, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TS) for HBRSEP2 to permit selective implementation of alternative radiological source term and modify the TS requirement for movement of irradiated fuel and performing core alterations.

Date of issuance: October 4, 2002.

Effective date: October 4, 2002.

Amendment No.: 195.

Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21285). The May 10, August 14, September 5, September 23, and October 4, 2002, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 31, 2002, as supplemented by letters dated June 12, June 25, July 22, September 16, and October 2, 2002.

Brief description of amendment: This amendment increases the licensed power level by approximately 1.7%, from 3,833 megawatts thermal (MWt) to 3,898 MWt. These changes result from increased feedwater flow measurement accuracy to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.

Date of issuance: October 10, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15622).

The June 12, June 25, July 22, September 16, and October 2, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 30, 2001.

Description of amendment request: The amendment revises the Cooper Nuclear Station's Technical Specifications (TS) 5.5.7, ''Ventilation Filter Testing Program (VFTP),'' reflecting a correction of an erroneous reference to American Society of Mechanical Engineers N510–1980.

Date of issuance: September 30, 2002.

Effective date: The amendment is effective on the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment No.: 195.

Facility Operating License No. DPR–46: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46480). The Commission related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 28, 2002, as supplemented on August 15, August 16, and October 2, 2002.

Brief description of amendments: The amendments change the Salem Technical Specifications (TS) requirements for Fuel Decay Time prior to commencing movement of irradiated fuel. TS Limiting Condition for Operation 3/4.9.3, ''Decay Time,'' is revised to allow fuel movement in the containment to commence 100 hours after the reactor has become subcritical between October 15th through May 15th. Should refueling occur between May 16th and October 14th, the current 168 hours decay time limit will remain in place. These requirements are valid through the year 2010.

Date of issuance: October 10, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 251 and 232.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 30, 2002 (67 FR 55887). The August 15, August 16, and October 2, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 18, 2002.

Brief description of amendments: These amendments change the Salem Technical Specifications (TSs) requirements associated with its containment spray nozzles. The frequency of TS Surveillance Requirement (SR) 4.6.2.1.d for verifying that the containment spray nozzles are unobstructed is changed from a fixed 10-year frequency to after activities that could result in nozzle blockage. In this case, PSEG will be required to evaluate the work performed to determine the impact to the containment spray system, or perform an air or smoke flow test. The applicable Bases pages are also revised to reflect this change.

Date of issuance: October 10, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 252 & 233.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53989). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: November 1, 2001, as supplemented on October 1, 2002.

Brief description of amendments: The changes modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable. Technical Specifications (TS) Section 3.0.5 was deleted and additional limiting conditions for operation were incorporated into electrical power systems TS 3.8.1.1, ''A.C. Sources—Operating.'' The corresponding TS Bases were modified accordingly. The proposed changes are consistent with the recommendations contained in NUREG–1431, Rev. 2, ''Standard Technical Specifications for Westinghouse Plants.''

Date of issuance: October 11, 2002.

Effective date: October 11, 2002.

Amendment Nos.: 253 and 234.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5331). The October 1, 2002 supplement was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 2002.

No significant hazards consideration comments received: No.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: February 20, 2001.

Brief description of amendment: The amendment eliminates the security plan requirements from the 10 CFR Part 50 licensed site after the spent nuclear fuel has been transferred to the 10 CFR Part 72 licensed Independent Spent Fuel Storage Installation and is based in part on exemptions from specific requirements set forth in 10 CFR Part 73 and 10 CFR 50.54(p).

Date of issuance: October 10, 2002.

Effective date: October 10, 2002, to be implemented within 30 days.

Amendment No.: 131.

Facility Operating License No. DPR–54: The amendment revised the Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001 (66 FR 15930). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 2002.

Brief description of amendment: The amendment revises Surveillance Requirements (SRs) 3.3.1.2 and 3.3.1.3 of the technical specifications on the reactor trip system (RTS) instrumentation. The change to SR 3.3.1.2 replaces the reference to the nuclear instrumentation system channel output by a reference to the power range channel output and deletes Note 1 to the SR. The change to SR 3.3.1.3 is editorial.

Date of issuance: October 2, 2002.

Effective date: October 2, 2002, and shall be implemented within 6 months of the date of issuance, including the incorporation of changes to the Technical Specification Bases as described in the licensee's application dated July 25, 2002.

Amendment No.: 148.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53992). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By November 29, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[2]

[2] ''The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitoner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: September 26, 2002.

Description of amendment request: The amendments consist of a one-time change to the Dresden Updated Final Safety Analysis Report (UFSAR) to state that lifting heavy loads up to and including 116 tons is allowed prior to and during the upcoming Dresden Unit 3 refueling outage number 17.

Date of issuance: October 4, 2002.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 196 and 189.

Facility Operating License Nos. DPR–19 and DPR–25: Amendment revises the UFSAR.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Joliet Herald News, dated October 1, 2002. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated October 4, 2002.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Dated at Rockville, Maryland, this 18th day of October 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27243 Filed 10–28–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, November 4, 2002; 8:30 a.m., Tuesday, November 5, 2002.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 4—1 p.m. (Closed); November 5—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, November 4–1 p.m. (Closed)

1. Financial Performance.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Tuesday, November 5–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 7–8, 2002.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Capital Investments.
   a. Flats Sequencing System and Delivery Point Packager.
   b. Surface-Air Support System Modification Request and Enterprise Data Warehouse—Network Operations Management.
   c. Point of Service (POS) One—Stage 3.
5. Tentative Agenda for the December 9–10, 2002, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–27619 Filed 10–25–02; 2:45 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27583]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

October 23, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 18, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 18, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PG&E Corporation, et al. (70–10047)

PG&E Corporation (''PG&E Corp.''), a holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, One Market, Spear Tower, Suite 400, San Francisco, California 94105, Pacific Gas and Electric Company (''PG&E''), a direct public-utility company subsidiary of PG&E Corp., Newco Energy Corporation (''Newco''), a direct nonutility subsidiary of PG&E, Electric Generation LLC (''Gen''), a direct nonutility subsidiary of Newco, all at 77 Beale Street, San Francisco, California 94177, have filed an application with the Commission under sections 9(a)(2) and 10 of the Act. On October 16, 2002, the Commission issued a notice of the application (HCAR No. 27578). This supplemental notice replaces the prior notice to correct certain inaccuracies.

On April 6, 2001, PG&E filed a petition under chapter 11 of the U.S. Bankruptcy Code. On September 20, 2001, PG&E Corp. and PG&E (collectively, ''Proponents'') jointly submitted to the United States Bankruptcy Court for the Northern District of California (''Bankruptcy Court'') a plan of reorganization for PG&E. The Proponents subsequently amended that plan (as amended, ''Plan''). PG&E is a debtor-in-possession, and continues to provide all of the electric generation, electric transmission, gas transmission, and gas and electric local distribution services that it did before, except that it is not able to purchase power to supply its net open position and is only able to make infrastructure investments. PG&E Corp., PG&E, Newco, and Gen (collectively, ''Applicants'') request authority to effect certain transactions, described below, as set forth in the Plan.[1]

I. Description of the Applicants

PG&E Corp., a California corporation, became the holding company of PG&E on January 1, 1997. Through other subsidiaries, PG&E Corp. is engaged in a number of nonutility businesses.[2] PG&E Corp.'s common stock and related preferred stock purchase rights are publicly traded on the New York Stock Exchange.

Newco was incorporated under the laws of the State of California on October 19, 2001. It is a wholly owned, direct subsidiary of PG&E. Newco is the sole member of three limited liability companies: ETrans LLC (''ETrans''); Gen; and GTrans LLC (''GTrans''). Currently, Gen is an inactive nonutility subsidiary that owns all of the outstanding ownership interests of twenty-seven limited liability companies (collectively, ''GenSub LLCs'').[3] The GenSub LLCs are California limited liability companies formed on October 30, 2001.

PG&E, a California corporation, is a public-utility company engaged principally in the business of providing regulated electricity and natural gas distribution and transmission services throughout most of northern and central California. Currently, all of the outstanding shares of common stock of PG&E are held directly or indirectly by PG&E Corp.[4] In addition, PG&E has a number of series of publicly held preferred stock outstanding. The

[1] To date, the Bankruptcy Court has not approved the Plan or any other proposed plan to reorganize PG&E, including the plan submitted by the California Public Utilities Commission (''CPUC'').

[2] These nonutility subsidiaries are organized under its wholly owned direct subsidiary, PG&E National Energy Group LLC (''PG&E NEG'').

[3] The GenSub LLCs are: Diablo Canyon LLC; Mokelumne River Project LLC; Rock Creek-Cresta Project LLC; Haas-Kings River Project LLC; Crane Valley Project LLC; Pit 1 Project LLC; Hat Creek 1 and 2 Project LLC; Poe Project LLC; Pit 3, 4 and 5 Project LLC; Upper NF Feather River Project LLC; Spring Gap-Stanislaus Project LLC; Kern Canyon Project LLC; Kilarc-Cow Creek Project LLC; Chili Bar Project LLC; Desabla-Centerville Project LLC; McCloud-Pit Project LLC; Drum-Spaulding Project LLC; Merced Falls Project LLC; Bucks Creek Project LLC; Potter Valley Project LLC; Phoenix Project LLC; Kerckhoff 1 and 2 Project LLC; Narrows Project LLC; Balch 1 and 2 Project LLC; Helms Project LLC; Battle Creek Project LLC; and Tule River Project LLC.

[4] PG&E Corp. holds approximately ninety-four percent of PG&E's common stock directly and approximately six percent indirectly through PG&E Holdings LLC (''PG&E Holdings''), a wholly-owned subsidiary of PG&E.

company's service territory covers approximately 70,000 square miles, and includes all or a portion of forty-eight of California's fifty-eight counties. As of December 31, 2001, PG&E employed approximately 19,000 people. PG&E's generation facilities consist primarily of hydroelectric and nuclear generating plants, and have an aggregate net operating capacity of approximately 6,649 megawatts (''MW''). As of December 31, 2001, PG&E owned approximately 18,648 miles of interconnected transmission lines of 60 kilovolts (''kV'') to 500 kV and transmission substations having a capacity of approximately 7,091 megavolt-amperes (''MVa''). PG&E distributes electricity to its customers through approximately 116,460 circuit miles of distribution system and distribution substations having a capacity of approximately 24,894 MVa. PG&E relinquished operational control, but not ownership, of its electric transmission facilities to the California Independent System Operator (''Cal-ISO'').[5] PG&E also owns and operates a gas transmission, storage and distribution system in California. As of December 31, 2001, PG&E's gas system consisted of approximately 6,254 miles of transmission pipelines, three gas storage facilities, and 38,410 miles of gas distribution lines. PG&E's peak send-out of gas on its integrated system in California during the year ended December 31, 2001, was 3,793 million cubic feet (''MMcf''). The total volume of gas throughput during 2001 was approximately 916,635 MMcf of which 270,556 MMcf was sold to direct end-use or resale customers and 646,079 MMcf was transported as customer-owned gas. As of December 31, 2001, PG&E served approximately 3.9 million gas customers.

Currently, the Federal Energy Regulatory Commission (''FERC'') regulates PG&E's electric transmission rates and access, interconnections, operation of the Cal-ISO, and terms and rates of wholesale electric power sales. In addition, most of PG&E's hydroelectric facilities operate in accordance with licenses issued by FERC. The Nuclear Regulatory Commission (''NRC'') oversees the licensing, construction, operation and decommissioning of nuclear facilities, including PG&E's Diablo Canyon Power Plant (''DCPP'') and the retired Humboldt Bay Power Plant Unit 3. The CPUC has jurisdiction to set retail rates and conditions of service for PG&E's electric distribution, gas distribution and gas transmission services in California. The CPUC also has jurisdiction over PG&E's sales of securities, dispositions of utility property, energy procurement on behalf of its electric and gas retail customers, and certain aspects of PG&E's siting and operation of its electric and gas transmission and distribution systems. In addition, the California Energy Commission has jurisdiction over the siting and construction of new thermal electric generating facilities fifty MW and greater in size.

[5] The Cal-ISO controls the operation of the California transmission system, is responsible for assuring the reliability of the electric system, provides open access transmission service on a nondiscriminatory basis, has responsibility for meeting applicable reliability criteria, planning transmission additions and assuring the maintenance of adequate reserves, and is subject to tariffs filed with the FERC.

II. The Plan

As of November 30, 2001, the total estimated allowed claims against PG&E was $13.135 billion. The Plan provides that PG&E pay its creditors $3.92 billion in cash that it currently has on hand and, as discussed below, finance the remaining $9.215 billion through asset sales, issuances of new securities and replacement mortgage bonds, and continuations of existing debt.

A. Asset Sales

Under the Plan, PG&E's four distinct lines of business—electric transmission; electric generation; gas transmission; and gas and electric distribution—would be structurally separated by dividing PG&E's assets and liabilities. PG&E would transfer, among other things, its electric transmission assets to ETrans in exchange for approximately $400 million in cash [6] and approximately $650 million in long-term notes issued to PG&E for transfer to its creditors.[7]

In exchange for approximately $850 million in cash [8] and approximately $1,550 million in long-term notes issued to PG&E for transfer to its creditors,[9] PG&E would transfer, among other things, most of its electric generation assets to the GenSub LLCs.

PG&E would transfer, among other things, certain gas transmission assets, to GTrans in exchange for $400 million in cash [10] and $500 million in long-term notes issued to PG&E for transfer to its creditors.[11]

[6] Applicants state that ETrans would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[7] Applicants state that the allocation between cash and notes may change based on market conditions and other factors.

[8] Applicants state that Gen, the parent of the GenSub LLCs, would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[9] *See* above, at n. 7.

B. Other Financing

1. Under the Plan, PG&E would issue approximately $3,706 million in new long-term notes to the public or to third parties in private offerings. PG&E would also issue new mortgage bonds to replace existing mortgage bonds. In addition, certain existing debts of PG&E would remain in place, for which PG&E would be responsible.

C. Asset and Debt Allocation

The Plan provides that: ETrans acquire 8.9% of PG&E's assets and assume 11.4% of its debt; Gen acquire 29.7% of PG&E's assets and assume twenty-six percent of its debt; and GTrans acquire 7.8% of PG&E's assets and assume 9.8% of its debt. Correspondingly, PG&E would retain 53.5% of its assets and be responsible for 52.8% of its debt.

III. The Reorganization

After its electric generation, electric transmission, and gas transmission assets are transferred, PG&E would dividend to PG&E Corp. all of its stock in Newco, and PG&E Corp. would dividend to its shareholders all of the common stock of PG&E (collectively, ''Reorganization'').[12] After the Reorganization, PG&E (''Reorganized PG&E'') would no longer be an associate company with respect to ETrans, Gen, or GTrans. Applicants project, on a *pro forma* basis, that the common equity of PG&E Corp., as a percentage of its total capitalization, would be 21.1% as of December 31, 2002.

In accordance with lease agreements between the GenSub LLCs and their parent company, Gen would operate its subsidiaries' facilities.[13] Consequently, upon receipt by the GenSub LLCs of PG&E's utility assets, Gen would be a public-utility company within the meaning of the Act by virtue of its operation of those assets. Under the Plan, Gen and PG&E would enter into a Master Power Purchase and Sales Agreement (''PSA''). The PSA provides that, for twelve years, Gen sell and Reorganized PG&E purchase the capacity, energy and other electrical

[10] Applicants state that GTrans would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[11] *See* above, at n.7.

[12] PG&E Holdings LLC would retain its ownership of approximately six percent of PG&E's outstanding common shares.

[13] The term of each lease is for as long as each GenSub LLC holds a license issued by the FERC to operate (or by the NRC to possess, use or operate) its facility.

products from Gen's facilities and procured by Gen under its certain contracts. Applicants state that they are seeking approval from the FERC for the proposed market-based rates provided for by the PSA. Under the PSA, Reorganized PG&E would have the right to dispatch (*i.e.*, direct the timing and level of operation) the facilities within legal and contractual constraints so that the output is delivered primarily when Reorganized PG&E needs it to serve its customers. The GenSub LLCs may also be public-utility companies by virtue of their direct ownership of generating facilities,[14] in which case Gen would also be a ''holding company'' as a result of its ownership of all the outstanding ownership interests in the GenSub LLCs.[15] Applicants also state that Gen would claim exemption by rule 2 from registration under section 3(a)(1) of the Act. Applicants state that, after the Reorganization, the FERC would have license and operating jurisdiction over most of the hydroelectric facilities and rate jurisdiction over the sale of the output of Gen and its subsidiaries, and the NRC would continue its jurisdiction over the operations of the Diablo Canyon Power Plant. Applicants project, on a *pro forma* basis, that the common equity of Gen, as a percentage of its total capitalization, would be −97.2% as of December 31, 2002.

ETrans would be a public-utility company as a result of its ownership and operation of transmission assets. Applicants state that the FERC would continue to have jurisdiction over the rates, terms and conditions for all transmission and transmission-related services provided by ETrans. They also state that the FERC would have jurisdiction over ETrans' participation in the Cal–ISO or any future FERC-approved Western regional transmission organizations that would have operating control over ETrans' transmission assets under FERC tariffs. Applicants project, on a *pro forma* basis, that the common equity of ETrans, as a percentage of its total capitalization, would be 33.8% as of December 31, 2002.

PG&E Corp. and Newco would also be ''holding companies,'' within the meaning of the Act, as a result of holding ownership interests in ETrans, Gen, the GenSub LLCs and, in the case of PG&E Corp., Newco. Applicants state that PG&E Corp. would continue to claim exemption,[16] and Newco would claim exemption, from registration by rule 2 under section 3(a)(1) of the Act. Applicants state that, with the exception of GTrans,[17] PG&E Corp. would continue to own its existing nonutility businesses through PG&E NEG.

Reorganized PG&E would continue to provide gas and electric distribution services using assets that it currently owns. PG&E's preferred stock would remain in place as the preferred stock of Reorganized PG&E. Applicants state that the CPUC would continue to have jurisdiction over Reorganized PG&E's retail electric and gas distribution assets, rates, and services. Applicants project, on a *pro forma* basis, that the common equity of Reorganized PG&E, as a percentage of its total capitalization, would be 44.4% as of December 31, 2002.

IV. Summary of Proposed Transactions

Applicants request authority for: (1) Gen to acquire directly the GenSub LLCs; (2) Newco to acquire directly Gen and ETrans, and to acquire indirectly the GenSub LLCs; and (3) PG&E Corp. to acquire directly Newco, and acquire indirectly ETrans, Gen, and the GenSub LLCs.[18] If necessary, Applicants also request authority for PG&E to acquire Newco, ETrans and Gen on an interim basis, between the time that utility assets are transferred to ETrans and Gen and the Reorganization is completed.[19]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27516 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

[14] Applicants argue that the GenSub LLCs would not be ''public-utility companies'' within the meaning of the Act but, alternatively, request authority for Gen to acquire them directly and Newco and PG&E Corp. to acquire them indirectly.

[15] *See supra*, at n.8.

[16] On July 5, 2001, the California Attorney General filed a petition requesting that the Commission terminate PG&E Corp.'s claimed exemption and require that PG&E Corp. register under section 5 of the Act or modify the company's exemption to ensure compliance with California law.

[17] GTrans would not be a public-utility company within the meaning of the Act because, according to Applicants, it would provide only gas transmission services.

[18] *See supra*, at n.8.

[19] Applicants also state that, if necessary, PG&E will claim exemption from registration by rule 2 under the Act for the interim period during which it will hold all of the ownership interests in Newco.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25784; File No. 812–12847]

The Equitable Life Assurance Society of the United States, *et al.*; Notice of Application

October 23, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) of the 1940 Act.

APPLICANTS: For purposes of the order requested pursuant to section 26(c), The Equitable Life Assurance Society of the United States (''Equitable''), Separate Account A of Equitable (''Separate Account A''), Separate Account FP of Equitable (''Separate Account FP''), Separate Account No. 45 of Equitable (''Separate Account 45''), Separate Account No. 301 of Equitable (''Separate Account 301''), The American Franklin Life Insurance Company (''American Franklin''), Separate Account VUL of American Franklin, Integrity Life Insurance Company (''Integrity''), Separate Account VUL of Integrity, National Integrity Life Insurance Company (''National Integrity'') and Separate Account VUL of National Integrity (collectively, the ''section 26 Applicants'').[1] For purposes of the order pursuant to section 17(b), Equitable, Separate Account A, Separate Account FP, Separate Account 45, Separate Account 66 and Separate Account 301 and EQ Advisors Trust (the ''Trust'') (collectively with Equitable and its Separate Accounts, the ''section 17 Applicants'').

SUMMARY OF APPLICATION: Applicants request an order (a) approving the proposed substitution by certain insurance company separate accounts of Class 1A shares of the EQ/Alliance International Portfolio for Class 1A shares of the EQ/Alliance Global Portfolio and Class 1B shares of the EQ/Alliance International Portfolio for Class

[1] Separate Account A, Separate Account FP, Separate Account 45, Separate Account No. 66 of Equitable (''Separate Account 66''), Separate Account 301, Separate Account VUL of American Franklin, Separate Account VUL of Integrity and Separate Account VUL of National Integrity are referred to herein collectively as the ''Separate Accounts'' and individually as a ''Separate Account.'' Separate Account A, Separate Account FP, Separate Account 45, Separate Account 66 and Separate Account 301 are referred to herein collectively as the ''EQ Separate Accounts'' and individually as an ''EQ Separate Account.''

1B shares of the EQ/Alliance Global Portfolio (the ''Substitution'') and (b) to permit certain in-kind transactions in connection with the proposed Substitution. Each of these portfolios serves as an underlying investment option for certain variable annuity contracts and/or variable life insurance policies (''Contracts'') issued by Equitable, American Franklin, Integrity and National Integrity (collectively, the ''Insurance Companies'' and individually, an ''Insurance Company''). (The EQ/Alliance International Portfolio is referred to herein as the ''Replacement Portfolio.'' The EQ/Alliance Global Portfolio is referred to herein as the ''Removed Portfolio.'').

FILING DATE: The application was filed on July 3, 2002 and amended and restated on October 23, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Peter D. Noris, Executive Vice President and Chief Investment Officer, The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104; G. Stephen Wastek, Esq., Integrity Life Insurance Company, National Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202; Lauren W. Jones, Esq., The American Franklin Life Insurance Company, 2929 Allen Parkway, Houston, Texas 77019; and Arthur J. Brown, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable is a New York stock life insurance company that has been in business since 1859. Equitable is a wholly owned subsidiary of AXA Financial, Inc., which is a wholly owned subsidiary of the AXA Group, the holding company for an international group of insurance and related financial services companies. Equitable serves as depositor for each of the EQ Separate Accounts. Separate Account A, Separate Account 45 and Separate Account 301 fund certain variable annuity contracts. Separate Account FP funds certain variable life insurance policies. Separate Account 66 funds group pension and profit-sharing plans under group annuity contracts issued by Equitable. Each EQ Separate Account is a segregated asset account of Equitable and, with the exception of Separate Account 66, is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account 66 is excluded from registration under the 1940 Act pursuant to section 3(c)(11) of the 1940 Act. Separate Account 66 is not a section 26 Applicant. Units of interest in the EQ Separate Accounts under the Contracts issued by Equitable are registered under the Securities Act of 1933, as amended (''1933 Act'').

2. American Franklin is a legal reserve stock life insurance company organized under the laws of the State of Illinois in 1981. American Franklin is an indirect, wholly owned subsidiary of American International Group, Inc. (''AIG''). AIG, a Delaware corporation, is a holding company which through its subsidiaries is primarily engaged in a broad range of insurance and insurance-related activities and financial services in the United States and abroad. American Franklin serves as depositor for Separate Account VUL of American Franklin, which funds certain variable life insurance policies. Separate Account VUL of American Franklin is a segregated asset account of American Franklin and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in this Separate Account under the Contracts issued by American Franklin are registered under the 1933 Act.

3. Integrity is an Ohio stock life insurance company that has been in business since 1966. Integrity is a wholly owned subsidiary of The Western and Southern Life Insurance Company (''W&S''), a mutual life insurance company originally organized under the laws of the state of Ohio in 1888. Integrity serves as depositor for Separate Account VUL of Integrity, which funds certain variable life insurance policies. Separate Account VUL of Integrity is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in this Separate Account under the Contracts issued by Integrity are registered under the 1933 Act.

4. National Integrity is a New York stock life insurance company that has been in business since 1968. National Integrity is a wholly owned subsidiary of Integrity, which in turn is a wholly-owned subsidiary of W&S. National Integrity serves as depositor for Separate Account VUL of National Integrity, which funds certain variable life insurance policies. Separate Account VUL of National Integrity is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in this Separate Account under the Contracts issued by National Integrity are registered under the 1933 Act.

5. The Trust is organized as a Delaware business trust and registered as an open-end management investment company under the 1940 Act. Its shares are registered under the 1933 Act. The Trust is a series investment company and currently has 39 separate series (each a ''Portfolio'' and collectively, the ''Portfolios''). Equitable currently serves as investment manager (''Manager'') of each of the Portfolios. Both the Removed and Replacement Portfolios are series of the Trust. The Trust does not impose sales charges for buying and selling its shares. All dividends and other distributions with respect to a Portfolio's shares are reinvested in full and fractional shares of the Portfolio to which they relate. The Trust currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. Under that distribution plan, up to 0.50% of the average daily net assets attributable to the Class IB shares of each Portfolio may be used to pay for distribution and shareholder services. The distributors for the Class IA and Class IB shares of each Portfolio are AXA Advisors, LLC (''AXA Advisors'') and AXA Distributors, LLC (''AXA Distributors''). Under the Distribution Agreements with respect to the promotion, sale and servicing of shares of each Portfolio,

payments to AXA Advisors and AXA Distributors, with respect to activities under the distribution plan, are currently limited to payments at an annual rate equal to 0.25% of the average daily net assets of each Portfolio (including the Removed and Replacement Portfolios) attributable to its Class IB shares.

6. The Manager has retained investment sub-advisers (''Advisers'') to provide day-to-day investment advisory services for each of the 39 current Portfolios. The Trust has received an exemptive order from the Commission (''Multi-Manager Order'') that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the Trust, and without the approval of shareholders to: (a) select new or additional Advisers for each Portfolio; (b) enter into new Investment Advisory Agreements with Advisers (''Advisory Agreements'') and/or materially modify the terms of any existing Advisory Agreement; (c) terminate any existing Adviser and replace the Adviser; and (d) continue the employment of an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.

7. Each Insurance Company, on its own behalf and on behalf of its Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. In particular, the Section 26 Applicants propose to substitute Class IA and Class IB shares of the Replacement Portfolio for Class IA and Class IB shares of the Removed Portfolio, respectively.

8. The Section 26 Applicants propose the Substitution as part of a continued and overall business plan by each of the Insurance Companies to make its Contracts more attractive to existing Contract owners or to prospective purchasers, as the case may be. Each of the Insurance Companies has carefully reviewed its Contracts and each investment option offered under its Contracts with the goal of providing a superior choice of investment alternatives. In certain cases, the Substitution is intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through certain Separate Accounts. Additionally, in each case, the Substitution will substitute shares of the Replacement Portfolio for shares of the Removed Portfolio, which has an identical investment objective and similar investment policies and risks as the Replacement Portfolio. The Substitution also would replace a portfolio that has been experiencing a significant decline in Contract owner interest, evidenced by recent net cash outflows, with a portfolio that has generated more interest among Contract owners, evidenced by its modest net cash inflows in that same time period. Furthermore, the Substitution ultimately may enable an Insurance Company to reduce certain of the costs that it incurs in administering the Contracts by consolidating overlapping and duplicative Portfolios. Finally, the Substitution is designed to provide Contract owners with an opportunity to continue their investment in a similar Portfolio without interruption and without any cost to them. In this regard, the Insurance Companies have agreed to bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitution (''Substitution Date''), the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitution.

9. The Replacement Portfolio has an identical investment objective and similar investment policies and risks as the Removed Portfolio. In addition, Alliance Capital Management, L.P. (''Alliance'') serves as the Adviser to both Portfolios. The investment objective of the Replacement and Removed Portfolios is to seek to achieve long-term growth of capital. To achieve this objective, Alliance invests the assets of the Replacement Portfolio primarily in both growth-oriented and value-oriented stocks of established non-U.S. companies. These non-U.S. companies may have operations in the U.S., in their country of incorporation and/or in other countries. The Replacement Portfolio also may invest in any type of investment grade fixed income security, including preferred stocks, convertible securities, bonds, notes and other evidences of indebtedness, including obligations of foreign governments. Although no particular proportion of stocks, bonds or other securities is required to be maintained, the Portfolio intends under normal market conditions to invest primarily in equity securities. The Portfolio is diversified for purposes of the 1940 Act.

10. The Removed Portfolio invests primarily in a diversified mix of equity securities of U.S. and established foreign companies that Alliance believes have prospects for growth. The Portfolio is diversified for purposes of the 1940 Act. Like the Replacement Portfolio, the Removed Portfolio may invest in any type of security, including common and preferred stocks, bonds and other evidences of indebtedness, and other securities of issuers wherever organized and governments and their political subdivisions. No particular proportion of stocks, bonds or other securities is required to be maintained, although the Removed Portfolio, like the Replacement Portfolio, intends under normal conditions to invest substantially all of its assets in equity securities. Although the Replacement Portfolio generally does not invest to a significant extent in the securities of U.S. issuers, the primary risks associated with an investment in the Replacement and Removed Portfolios are similar. In particular, the primary risks associated with an investment in the Replacement Portfolio include derivatives risk, equity risk, foreign securities risk, growth investing risk, leveraging risk, liquidity risk and value investing risk. The list of primary risks associated with an investment in the Removed Portfolio is the same.

11. Applicants believe that the Replacement Portfolio's investment policies are sufficiently similar to those of the Removed Portfolio that the essential objective and risk expectations of Contract owners can continue to be met. In particular, Applicants believe that the Removed Portfolio's ability to invest in foreign companies is the primary reason that Contract owners allocate value to that Portfolio. Thus, substituting the Replacement Portfolio, which invests primarily in foreign companies, for the Removed Portfolio is consistent with this investment approach. Contract owners that seek to pursue an asset allocation strategy that blends U.S. and foreign investments will continue to have access through their Contracts to a wide variety of Portfolios that invest primarily in U.S. companies, as well as in the Replacement Portfolio and other Portfolios that invest primarily in foreign companies. Applicants also note that there is no other Portfolio in the Trust that pursues a global investment strategy and invests primarily in equity securities that would be a more appropriate replacement portfolio. Applicants note, however, that the foreign companies in which the Removed and Replacement Portfolios

invest are very similar in that they are primarily large, established companies. In addition, most of the companies in which the Replacement Portfolio invests have significant operations in the U.S. Thus, Applicants believe that, after the proposed Substitution, a Contract owner would continue to have value allocated to a Replacement Portfolio with an identical investment objective and similar investment policies, and would have assumed similar risks.

12. The charts below compare the advisory fees, total expenses and asset sizes of the Class IA and Class IB shares of the Replacement Portfolio and the Removed Portfolio for the one year periods ended December 31, 2000, December 31, 2001, and September 30, 2002. The charts also show the *pro forma* expenses of the Replacement Portfolio assuming that the Substitution had been in effect for the year ended December 31, 2001. Although the management fee for the Replacement Portfolio is higher than that of the Removed Portfolio, as a condition of any order approving the proposed Substitution, Equitable will contractually reduce its management fee for the Replacement Portfolio by adopting the management fee schedule of the Removed Portfolio, which at all asset levels is lower than the management fee of the Replacement Portfolio. This proposed reduction is reflected in the *pro forma* information presented in the charts below. In addition, although the total expense ratio for each class of shares of the Replacement Portfolio was higher than the corresponding class of shares of the Removed Portfolio for each period, Equitable, as a condition to any order approving the proposed Substitution, will waive its management fee and reimburse expenses incurred by the Replacement Portfolio for a period of two years after the date of the Substitution to the extent necessary to ensure that the total expense ratio of each class of shares of the Replacement Portfolio after the Substitution is no higher than that of the corresponding class of shares of the Removed Portfolio for the one year period ended September 30, 2002. However, as shown below, it is expected that the total expense ratio of each class of shares of the Replacement Portfolio will be no higher than that of the corresponding class of shares of the Removed Portfolio as a result of the Substitution, absent any waivers or reimbursements.

	Replacement portfolio (class IA)			Removed portfolio (class IA)			Combined portfolio (class IA)
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2001
Net Assets	$228 million	$168 million	$164 million	$1.5 billion	$1.1 billion	$961 million	$1.268 billion
Management Fee [1]	0.87 percent	0.85 percent	0.85 percent	0.69 percent	0.73 percent	0.74 percent	0.73 percent
Rule 12b–1 Fee	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other Expenses	0.29 percent	0.25 percent	0.36 percent	0.09 percent	0.12 percent	0.17 percent	0.12 percent
Total Expenses	1.16 percent	1.10 percent	1.21 percent	0.78 percent	0.85 percent	0.91 percent	0.85 percent

[1] The management fee for the Replacement Portfolio on an annual basis is equal to 0.850% of the first $1 billion; 0.800% of the next $1 billion; 0.775% of the next $3 billion; 0.750% of the next $5 billion; and 0.725% thereafter. The management fee for the Removed Portfolio on an annual basis is equal to 0.750% of the first $1 billion; 0.700% of the next $1 billion; 0.675% of the next $3 billion; 0.650% of the next $5 billion; and 0.625% thereafter.

	Replacement portfolio (class IB)			Removed portfolio (class IB)			Combined portfolio (class IB)
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2001
Net Assets $37 million	$36 million	$40 million	$198 million	$196 million	$179 million	$232 million.	
Management Fee	0.87 percent	0.85 percent	0.85 percent	0.69 percent	0.73 percent	0.74 percent	0.73 percent
Rule 12b–1 Fee	0.25 percent	0.25 percent	0.25 percent	0.25 percent	0.25 percent	0.25 percent	0.25 percent
Other Expenses	0.29 percent	0.25 percent	0.36 percent	0.09 percent	0.12 percent	0.17 percent	0.12percent
Total Expenses	1.41 percent	1.35 percent	1.46 percent	1.03 percent	1.10 percent	1.16 percent	1.10 percent

13. Applicants represent that the Trust's independent accountants will perform procedures, as agreed upon between the Trust and the independent accountants, relating to the total expense ratio for each class of shares of the Removed Portfolio for the one year period ended September 30, 2002. Within 90 days after the issuance of any order pursuant to this Application, the independent accountants will issue an agreed upon procedures report to management of the Trust (which consists entirely of persons who are officers or employees of Equitable) and the Board of Trustees of the Trust detailing the results of the procedures performed relating to the calculation of the total expense ratios based solely on the unaudited information provided by Equitable, the Trust's administrator, and JP Morgan Investors Services Co. (''JPMIS''), the Trust's sub-administrator. In conjunction with the procedures, Equitable and JPMIS will provide a certification that the unaudited information was prepared on a basis consistent with the audited financial statements of the Trust. Further, the certification will state that the information was produced under the same internal control environment that supports the Trust's audited financial statements and that to their knowledge there were no material deficiencies in such internal controls from October 1, 2001, through the date the procedures are performed. The procedures performed by the independent accountants will include reading the testing results of the control objectives applicable to expenses and net asset value calculations contained in the September 30, 2002, JPMIS Fund Accounting SAS 70 Report on Controls Placed in Operation and Test of Operating Effectiveness covering the period from October 1, 2001, through

September 30, 2002, and reporting on any exceptions that pertain to the expense accounting process and net asset value calculations. The independent accountants' procedures will also include testing, on a selection basis, of expenses and net asset value calculations during the period October 1, 2001, to September 30, 2002, and testing of all audit adjustments pertaining to the relevant portfolios recorded or proposed by the independent accountants and not recorded, if any, associated with each of the audits of the financial statements of the Trust for the years ended December 31, 2001 and 2002 to identify any which pertain to expense adjustments and net asset value calculations. Finally, based upon the December 31, 2002, audit of the Trust by the independent accountants, the independent accountants' report will indicate whether there were any matters noted involving internal control and its operation that would be considered material weaknesses as of December 31, 2002. This internal control consideration will be based upon the planning and performing of the December 31, 2002, audit of the financial statements of the Trust, which is for the purpose of determining the auditing procedures for expressing an opinion on the Trust's financial statements and not to provide assurance on internal control. If the Trust's independent accountants determine, based on the procedures performed, that the total expense ratios for the Removed Portfolio for the period October 31, 2001, to September 30, 2002, were lower than those shown above, Applicants will modify the Trust's fee waiver and reimbursement arrangement as of the date of the Substitution to conform to the calculation of the total expense ratio for each class of shares of the Removed Portfolio by the independent accountants. In addition, Equitable will reimburse the Replacement Portfolio for any amounts not previously reimbursed to that Portfolio to the extent necessary to ensure that the total expense ratios of the Class IA and Class IB shares of the Replacement Portfolio for the period from the date of the Substitution to the date of the modification of the Trust's fee waiver and reimbursement arrangement (on an annualized basis) do not exceed the independent accountants' calculation of the expense ratios for the Class IA and Class IB shares of the Removed Portfolio for the one year period ended September 30, 2002. Furthermore, the revised fee waiver and expense reimbursement arrangement will be in effect for the twenty-four month period beginning as of the date of the Substitution. The report will be treated by the Trust as part of its books and records available for inspection by the staff of the Commission. The report will be retained by the Trust for a period of not less than six years.

14. The chart below compares the average annual total returns of the Class IA shares of the Replacement Portfolio and the Removed Portfolio, as well as returns for their respective benchmarks, for the one year, three year, five year, ten year and since inception periods ended December 31, 2001. Although the Removed Portfolio's historical performance for the one, three and five year periods was more favorable than that of the Replacement Portfolio, the Removed Portfolio has not generated significant Contract owner interest recently, evidenced by its recent net cash outflows. The Replacement Portfolio, in contrast, has generated modest net cash inflows, indicating greater Contract owner interest. The Replacement Portfolio's recent performance also has been more favorable than that of the Removed Portfolio, although there is no guarantee that this will continue to be the case in the future.

[Amounts in percent]

Portfolio class IA, periods ended 12/31/2001	1 Year	3 Years	5 Years	10 Years	Since inception
EQ/Alliance International Portfolio	(22.88)	(6.48)	(2.60)	NA	1.03 (04/03/95)
MSCI EAFE	(21.44)	(5.05)	0.89	NA	2.87
EQ/Alliance Global Portfolio	(20.08)	(3.43)	4.12	8.71	9.01 (08/27/87)
MSCI World	(16.82)	(3.37)	5.37	8.06	6.72

15. In connection with the Substitution, Equitable, American Franklin and their respective Separate Accounts will file with the Commission prospectuses and/or prospectus supplements that notify Contract owners and participants of their respective Insurance Company's intention to substitute the Replacement Portfolio for the Removed Portfolio.[2] The prospectuses and prospectus supplements, as appropriate, also will describe the Substitution, the Replacement and Removed Portfolios and the impact of the Substitution on fees and expenses at the underlying fund level. The section 26 Applicants will send the appropriate prospectus or prospectus supplement (or other notice), as appropriate, containing this disclosure to all existing and new Contract owners and participants. Together with this disclosure, the section 26 Applicants will send to any of those existing Contract owners and participants who have not previously received a prospectus for the Replacement Portfolio a prospectus and/or prospectus supplement for the Replacement Portfolio. New purchasers of Contracts will be provided with a Contract prospectus and/or supplement containing disclosure regarding the Substitution, as well as a prospectus for the Replacement Portfolio. The Contract prospectus and/or supplement and the prospectus and/or prospectus supplement for the Trust, including the Replacement Portfolio, will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

16. Contract owners and participants will be sent a notice of the Substitution before the Substitution Date (which notice may be in the form of a prospectus supplement as described above). The notice will inform Contract owners and participants that the Substitution will be effected on the Substitution Date and that they may transfer assets from the Removed Portfolio (or from the Replacement Portfolio following the Substitution Date) to another investment option available under their Contract without the imposition of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed for a period beginning 30 days

[2] Integrity, National Integrity and their respective Separate Accounts will prepare and distribute a notice of the Substitution, which will contain substantially the same information that would be contained in any prospectus supplement as described herein.

before the Substitution Date and ending no earlier than 30 days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts. Within five days after the Substitution Date, the section 26 Applicants will mail: (a) a written notice to all Contract owners and participants affected by the Substitution informing them that the Substitution was completed and restating that they may transfer assets from the Replacement Portfolio to another investment option available under their Contract free of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed through a date at least 30 days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts; and (b) a confirmation of the transactions.

17. The Substitution will be effected by redeeming shares of the Removed Portfolio partly in-kind and partly in cash on the Substitution Date at their net asset value and using the proceeds of those in-kind redemptions to purchase shares of the Replacement Portfolio at their net asset value on the same date (''In-Kind Transactions''). The in-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Replacement Portfolio and the Removed Portfolio. The Manager, in consultation with the Replacement Portfolio's Adviser, will review the In-Kind Transactions to ensure that the assets are suitable for the Replacement Portfolio. All assets and liabilities will be valued based on the normal valuation procedures of the Removed Portfolio and the Replacement Portfolio, as set forth in the Trust's registration statement

18. No transfer or similar charges will be imposed by the section 26 Applicants and, on the Substitution Date, all Contract values will remain unchanged and fully invested. Contract owners and participants will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or the Insurance Companies' obligations under the Contracts be altered in any way. All expenses in connection with the proposed Substitution, including any brokerage, legal, accounting, and other fees and expenses will be paid by the Insurance Companies. The proposed Substitution will not impose any tax liability on Contract owners or participants or cause the Contract charges currently being paid by Contract owners and participants to be greater after the proposed Substitution than before the proposed Substitution. All Contract-level fees will remain the same after the proposed Substitution. The proposed Substitution will not alter in any way the benefits, including tax benefits to Contract owners and participants, or the Insurance Companies' obligations under the Contracts.

In addition, the proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts.

19. The section 26 Applicants request that the Commission issue an order pursuant to section 26(c) of the 1940 Act approving the substitution of: (i) Class IA shares of the Replacement Portfolio for Class IA shares of the Removed Portfolio; and (ii) Class IB shares of the Replacement Portfolio for Class IB shares of the Removed Portfolio. The section 17 Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act granting an exemption from section 17(b) to the extent necessary to permit the In-Kind Transactions.

Applicable Law

Section 26(c) of the 1940 Act

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that ''[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.''

2. Applicants represent that the proposed Substitution involves a substitution of securities within the meaning of section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the Commission pursuant to section 26(c) approving the proposed Substitution.

3. Applicants state that the section 26 Applicants have reserved the right under the Contracts to substitute shares of another eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. Applicants represent that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right. The section 26 Applicants have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit the Insurance Companies and their respective Contract owners.

4. Applicants state that the Replacement Portfolio and the Removed Portfolio have identical investment objectives and similar investment policies and risks. In addition, the proposed Substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts, and any impact on the investment programs of affected Contract owners, including the appropriateness of the available investment options, should therefore be negligible.

5. Applicants also maintain that the ultimate effect of the Substitution would be to consolidate overlapping and duplicative investment options in a single Portfolio. This consolidation will permit each Insurance Company to present information to its Contract owners and participants in a simpler and more concise manner. The anticipated streamlining of the disclosure documents should provide Contract owners and participants with a simpler presentation of the available investment options under their Contracts and related financial information.

6. Thus, Applicants state that the Substitution protects the Contract owners and participants who have allocated Contract value to the Removed Portfolio by: (a) Providing an underlying investment option for sub-accounts invested in the Removed Portfolio that is similar to the Removed Portfolio; (b) providing such Contract owners and participants with simpler and more focused disclosure documents; and (c) providing such Contract owners and participants with an investment option that would have an identical management fee schedule and a total expense ratio that is no higher than the current investment option.

7. Applicants assert that the proposed Substitution is not of the type that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute investment securities in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner and participant with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners and

participants under their Contracts. Additionally, the Substitution will not, in any manner, reduce the nature or quality of the available investment options. Moreover, the section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected sub-accounts without any cost or other penalty that may otherwise have been imposed for a period beginning 30 days before the Substitution Date and ending no earlier than 30 days after the Substitution Date. Applicants conclude that the Substitution will not result in the type of costly forced redemption that section 26(c) was designed to prevent.

8. Applicants assert that the proposed Substitution is also unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners also may have considered the Insurance Company's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitution.

9. Applicants state that the significant terms and conditions of the Substitution are as follows:

a. The Replacement Portfolio has an identical investment objective and similar investment policies and risks as the Removed Portfolio, providing Contract owners and participants with a means to continue their investment goals and risk expectations;

b. To ensure that the management fee of the Replacement Portfolio is no higher after the Substitution than that of the Removed Portfolio before the Substitution, Equitable will contractually reduce its management fee for the Replacement Portfolio by adopting the management fee schedule of the Removed Portfolio, which at all asset levels is lower than the management fee of the Replacement Portfolio;

c. Equitable will waive its management fee with respect to the Replacement Portfolio and/or reimburse expenses incurred by the Replacement Portfolio during the twenty-four months following the Substitution to the extent necessary to ensure that the total expense ratios for any period (not to exceed a fiscal quarter) of the Class IA and Class IB shares of the Replacement Portfolio do not exceed 0.91% and 1.16%, respectively, of the Replacement Portfolio's average daily net assets (on an annualized basis) (or the expense ratios determined after the procedures are performed by the Trust's independent accountants);

d. Investments in the Replacement Portfolio may be temporary investments for Contract owners and participants as each Contract owner and participant may exercise his or her own judgment as to the most appropriate investment alternative available. In this regard, the proposed Substitution retains for Contract owners and participants the investment flexibility which is a central feature of the Contracts. Additionally, for a period beginning at least 30 days before the Substitution Date, and ending no earlier than 30 days after the Substitution, Contract owners and participants directly affected by the Substitution will be permitted to transfer value from the Replacement Portfolio or the Removed Portfolio to another investment option available under their Contract free of any otherwise applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts;

e. The Substitution will be effected at the relative net asset values of the shares of the Removed Portfolio and the Replacement Portfolio, without the imposition of any transfer or similar charge by the section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract;

f. Contract owners and participants will not incur directly or indirectly related fees or charges as a result of the Substitution. The Insurance Companies have agreed to bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution;

g. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of Portfolios that Contract owners and participants can select during the life of a Contract;

h. The Substitution will not alter or affect the insurance benefits or rights of Contract owners or participants or the terms and obligations of the Contracts;

i. Contract owners and participants would not incur any adverse tax consequences as a result of the Substitution;

j. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution that identifies the Substitution made on behalf of the Contract owner or participant within five days following the Substitution;

k. Contract owners and participants may withdraw amounts under the Contract or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge; and

l. For those Contract owners or participants who were Contract owners or participants on the date of the Substitution, each Insurance Company will not increase sub-account or Contract expenses for a period of 24 months following the Substitution Date.

Section 17(a) of the 1940 Act

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from section 17(a) if: (a) The terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transactions are consistent with the policy of each registered investment company concerned; and (c) the proposed transactions are consistent with the general purposes of the 1940 Act.

3. The Section 17 Applicants request an order pursuant to section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

4. The section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. The In-Kind Transactions will be effected at the respective net asset values of the Removed Portfolio and the Replacement

Portfolio, as determined in accordance with the procedures disclosed in the registration statement for the Trust and as required by Rule 22c-1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The section 17 Applicants also assert that the proposed In-Kind Transactions by the section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the Application, the section 26 Applicants and the section 17 Applicants respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of section 26(c) of the 1940 Act and section 17(b) of the 1940 Act and respectfully request that the Commission issue an order of approval pursuant to section 26(c) of the 1940 Act and section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46705; File No. SR–BSE–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Boston Stock Exchange, Inc. to Amend its Minor Rule Violation Plan

October 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 23, 2002, the BSE amended the proposed rule change.[3] The BSE again amended the proposal on October 9, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Minor Rule Violation Plan (''Plan''). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Chapter XXXIV

Minor Rule Violations

Rule Violations

Sec. 1 No change.

Sec. 2(a) No change.

(b) [Failure to Confirm Open Orders (Ch. II, Sec. 15). Initial Offense—Written Warning; Second Offense—$100; Subsequent Offenses—$250.]

Failure to Maintain Proper Records (Ch. II, Sec. 15; Ch. XV, Sec. 8; Ch. XXII, Sec. 1):

Failure to maintain required records for annual examinations, surveillance, and other purposes. Initial offense—$500; Subsequent Offenses—$1,000

(c)—(e) No change

(f) Floor Order Facilitation (*Ch. II, Sec. 3; Ch. XV, Sec. 2; Ch. XV, Sec. 3;* Ch. XVIII, Sec. 1):

Conduct which may cause delays or interruptions in the orderly facilitation and/or confirmation of orders received on the Floor such as failure to record proper post locations or dilatory practices in handling orders received on the Floor[.], *as measured by the Exchange and in excess of three (3) instances over the preceding rolling thirty-day period.*

Initial Offense—Written Warning; Second Offense—$100; Subsequent Offenses—$250.

(g)—(j) No change.

(k) Trading in an Inactive Alternate and/or Trading Account (Ch. XXII, Sec. 2(m)):

Patterns of trading indicating abuse of inactive accounts, as measured by the Exchange, and in excess of three (3) instances over the preceding thirty-day period.

Initial Offense—$500; Subsequent Offenses—$2,500

(l)—(n) No change.

(o) Dealings Outside of Exchange Operating Hours (Ch. I–B, Sec. 2):

First offense—Written Warning; Second Offense—$50; Subsequent Offenses—$100

Policy Violations

Sec. 3 (a)—(g) No change.

(h) Floor Conduct:

Unprofessional or Disruptive Behavior.

Initial Offense—$100; Subsequent Offenses—$500

Extremely unprofessional or disruptive behavior, as determined by two floor officials.

All offenses—$1,000

(i)—(o) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 21, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original filing.

[4] *See* October 8, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, SEC (''Amendment No. 2''). In Amendment No. 2, the BSE added language to set a standard by which violations of certain provisions of the Minor Rule Violation Plan will be determined.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Plan, which is located in Chapter XXXIV, ''Minor Rule Violations'' of the Rules of the Board of Governors of the Exchange.

The first proposed change is to delete Section 2, Rule Violations, Paragraph (b), Failure to Confirm Open Orders. This Rule was originally intended to address the manual obligations of specialists to confirm their open orders at the end of the day. This has become an automated process, and the Rule is therefore unnecessary.

The second proposed change is to replace Section 2, Rule Violations, Paragraph (b), Failure to Confirm Open Orders, with a new Paragraph (b) entitled ''Failure to Maintain Proper Records (Chapter II, Dealings on the Exchange, Section 15, Records of Orders from Offices to Floor; Chapter XV, Dealer Specialists, Section 8, Records; Chapter XXII, Financial Reports and Requirements, Section 1, Member and Member-Organization's Statement of Financial Condition)''. The explanatory sentence for this rule violation will read: ''Failure to maintain required records for annual examinations, surveillance, and other purposes.'' Due to the potentially serious nature of record keeping violations, the Exchange seeks to prescribe a $500 fine for initial offenses, and a $1,000 fine for subsequent violations of this paragraph. Furthermore, as to form, inserting this rule into this paragraph will obviate the need to renumber subsequent paragraphs.

The third proposed change is to alter Section 2, Rule Violations, Paragraph (f), Floor Order Facilitation (Ch. XVIII, Sec. 1), so that it more fully addresses practices of specialists that may have a dilatory effect on the handling of orders submitted to the floor for execution. The wording of the Section will not be changed, but several rule references will be added to the title of the section, to enable the BSE to more accurately identify which section(s) of its rules are the focus of the violation. The following rule references will be added into the title of the paragraph: Chapter II, Dealings on the Exchange, Sec. 3, Execution Guarantee; Chapter XV, Dealer Specialists, Sec. 2, Responsibilities, and Sec. 3, Code of Acceptable Business Practices for Specialists.

The fourth proposed change is to add an explanatory sentence to Section 2, Rule Violations, Paragraph (k) Trading in an Inactive Alternate and/or Trading Account, to address a change in focus to identify patterns in trading in these accounts, as opposed to individual trades. Due to volume increases in the marketplace, the BSE feels that trading patterns are a more efficient way to identify abuses of inactive accounts. Accordingly, an explanatory sentence will read: ''Patterns of trading indicating abuse of inactive accounts.'' The fine structure will remain the same.

The fifth proposed change is to add a new paragraph to Section 2, Rule Violations. New paragraph (o) will be entitled ''Dealings Outside of Exchange Operating Hours (Chapter I–B, Business Hours, Section 2, Dealings on the Floor, Hours)''. No explanatory sentence is needed. A written warning will be given for first offenses. Second offenses will result in a $50 fine, and subsequent offenses will result in $100 fines.

The final proposed change is to Section 3, Policy Violations, Paragraph (h), Floor Conduct, and is designed to address egregious behavior. A third fine category will be added, with a brief explanation, which will read: ''Extremely unprofessional or disruptive behavior, as determined by two floor officials.'' The fine will be $1,000 per offense.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR–BSE–2002–04 and should be submitted by November 19, 2002.

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27485 Filed 10–28–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46714; File No. SR–EMCC–2002–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Expanding the Types of Instruments Eligible for Processing

October 23, 2002.

I. Introduction

On January 10, 2002, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR-EMCC–2001–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on August 9, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to expand the types of instruments eligible for processing by EMCC to include emerging market corporate debt that meets certain criteria. EMCC will accomplish this by adding a new definition, ''eligible corporate debt,'' to Rule 1. ''Eligible corporate debt'' will be defined as those instruments which:

1. Are issued by or on behalf of an issuer domiciled in an emerging markets jurisdiction;

2. The minimum amount of the debt issue outstanding or to be issued at the time of determination is $200,000,000, and the issuer has cumulatively issued at least $750,000,000 (or equivalent currency) of debt securities; and

3. EMCC does or would include the sovereign debt of the jurisdiction where the issuer is domiciled in the list of EMCC eligible instruments.

As with all instruments that are EMCC eligible, such instruments will also have to meet the existing criteria set forth in Rule 3 in that they will have to be eligible for settlement at a ''qualified securities depository''[3] and must be U.S. dollar denominated. Accordingly, Section 1 of Rule 3 will be amended to include a reference to ''eligible corporate debt.''

EMCC believes that the inclusion of dollar denominated emerging market corporate debt meeting the foregoing criteria will be beneficial to its members because it will help eliminate counterparty risk in these instruments when EMCC becomes the central counterparty. EMCC also believes that its current clearing fund formula will allow it to collect appropriate amounts of collateral to cover the risks posed by this class of securities.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] By expanding the types of instruments available for processing by EMCC, the proposed rule change will allow more of EMCC's members' trades to be processed through the facilities of EMCC which should promote the prompt and accurate clearance and settlement of such securities transactions. Furthermore, the Commission finds that EMCC's current risk management procedures, including its clearing fund formula, have been designed and are operated in such a manner that EMCC will be able to provide clearance and settlement services for eligible corporate debt in a manner that will provide for the safeguarding of securities and funds in its possession or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC–2002–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27488 Filed 10–28–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46712; File No. SR–NASD–2002–149]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Program for Exchange-Listed Securities

October 23, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 18, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to codify on a permanent basis Nasdaq's InterMarket[3] Transaction Credit Pilot Program (''Program''), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.[4]

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46311 (August 5, 2002), 67 FR 51906.

[3] A qualified securities depository is defined by EMCC Rules to be a securities depository which has entered into an agreement with EMCC pursuant to which it will effect book-entry transfers of EMCC Eligible Instruments to and by EMCC.

[4] 15 U.S.C. 78q-1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000)(SR–NASD–00–32).

[4] The text is marked to show changes from the language of the rule as proposed to be amended by SR–NASD–2002–115, and assumes that the Commission will approve SR–NASD–2002–115 before approving this proposal. If the Commission determines that SR–NASD–2002–115 should not be approved, Nasdaq will submit an amendment to this filing to reflect the disposition of SR–NASD–2002–115.

7010. System Services

(a)—(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit.

[For a pilot period,] NASD members that trade securities listed on the NYSE (''Tape A'') and Amex (''Tape B'') in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing [4]*5*0% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter[, ending with the calendar quarter starting on October 1, 2002].

(d)—(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution venue that allows NASD members to quote and trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex''). The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX''), the Boston Stock Exchange (''BSE''), and the Cincinnati Stock Exchange (''CSE''), for retail order flow in stocks listed on the NYSE and the Amex. Through the InterMarket, Nasdaq operates the Computer Assisted Execution System (''CAES''), a system that facilitates the execution of trades in listed securities between NASD members that participate in the InterMarket, and the Intermarket Trading System (''ITS''), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[5]

Nasdaq proposes to modify the Program. Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD), from the Consolidated Tape Association (''CTA''), by providing a transaction credit to members who engage in over-the-counter trading activity in CTA-eligible securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also enables Nasdaq to compete against other exchanges that offer similar programs, including CHX, CSE, and BSE.[6]

Under the current Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (Tape A), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (Tape B). Eligibility for transaction credits is based on concurrent quarterly trading activity.[7] Under the current Program, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade,[8] although Nasdaq has filed a proposed rule change to allocate trades to the party that provides liquidity in a given transaction.[9]

Nasdaq believes that it is important to establish the transaction credit program as a permanent part of the InterMarket. The Program has been in place for three years, and has proved to be successful. The InterMarket has emerged as a viable competitive option to trading on the primary market and, along with other exchanges that trade CTA-eligible securities, has helped to reduce the cost of trading those issues. The Program has been a critical aspect of the InterMarket's ability to compete effectively with other exchanges.

To maintain that competitiveness, Nasdaq believes it is necessary to raise the percentage of revenue available for distribution under the Program from 40% to 50%. Currently, the CSE and CHX both distribute 50% of revenue under the formulae contained in their programs, and the BSE has filed a proposal with the Commission to distribute 50% of revenue as well.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[11] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes the proposed rule change will lower the cost of conducting business through the InterMarket for members that provide liquidity through ITS or CAES. Nasdaq also believes that encouraging members to provide liquidity will enhance the efficiency of the InterMarket, and will benefit investors whose trades are routed to the InterMarket by increasing

[5] *See* CAES/ITS User Guide, p.5, at www.intermarket.nasdaqtrader.com.

[6] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997)(SR–CHX–97–01); 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997)(SR–CSE–97–12); 49469 (September 13, 2002), 67 FR 59084 (September 19, 2002)(SR-BSE–2002–10).

[7] The Commission recently approved an amendment to the Program that made all members eligible to receive the transaction credit. *See* Securities Exchange Act Release No. 46549 (September 25, 2002), 67 FR 61705 (October 1, 2002)(SR–NASD–2002–111). Prior to that, a member had to print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing, and an average of 500 daily trades of Tape B securities during a quarter to qualify for Tape B sharing.

[8] Non-ITS/CAES trades that are reported to Nasdaq are attributed to the member identified in the trade report as the executing party, which is either the reporting party or a ''give up'' on whose behalf the trade is reported. The crediting of non-ITS/CAES trades remains unchanged.

[9] On August 16, 2002, Nasdaq filed SR–NASD–2002–115 to modify the current Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.*, that sells in response to an order to buy, or that buys in response to an order to sell). Nasdaq has incorporated that proposal in the permanent Program because it believes that encouraging InterMarket participants to provide liquidity will increase the efficiency of InterMarket transactions and enhance the competitiveness of InterMarket vis-à-vis the exchanges with which it competes.

[10] *See* Securities Exchange Act Release No. 49469 (September 13, 2002), 67 FR 59084 (September 19, 2002)(SR–BSE–2002–10).

[11] 15 U.S.C. 78o–3(b)(5).

the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.[12] In that Order, the Commission expressed concern that the subject proposed rule changes raised ''serious questions as to whether they are consistent with the Act and with the protection of investors.'' Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on this proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–149 and should be submitted by November 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27487 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

[12] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46713; File No. SR–NYSE–2002–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot With Respect to Exceptions to NYSE Rule 123(e) for Orders in Exchange-Traded Funds

October 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to extend until January 5, 2004 the effectiveness of the amendment to NYSE Rule 123(e) which provides that orders in Exchange-Traded Funds (''ETFs'') may be entered into an electronic system on the Floor (Front-End Systemic Capture or ''FESC'') within 90 seconds of execution. This amendment was approved by the Commission on a pilot basis for one year (the ''Pilot'') on January 7, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 21, 2001, the Exchange filed a proposed rule change to amend NYSE Rule 123(e) to provide that orders in ETFs may be entered within 90 seconds of execution.[6] NYSE Rule 123(e) ordinarily requires that all orders in any security traded on the Exchange be entered into an electronic data base before they can be represented in the Exchange's auction market. This exception to NYSE Rule 123(e) for ETFs was filed as a one-year pilot, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NYSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* SR–NYSE–2001–52 (December 21, 2001).

approved by the Commission on January 7, 2002.[7]

The Exchange proposes to extend this pilot for an additional year (from January 6, 2003 until January 5, 2004). The Exchange continues to believe that this proposal will facilitate trading in ETFs on the Exchange, while still ensuring that the Exchange maintains its electronic order data base with orders being entered in reasonable proximity to order executions. The Exchange notes that requirements that members record the time of receipt of an order on the Floor remain in full effect and are not affected by this proposal.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[8] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these needs by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission) and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii).[11] The Commission notes, however, that waiver of these periods is not necessary to continue the Pilot uninterrupted without inconvenience and delay to the public.[12] The Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement (given that the Exchange filed the proposed rule on October 8, 2002), but the Commission is not waiving the 30-day operative period because it is not necessary. The proposed rule change will enable members to execute orders in ETFs quickly without having to enter the order into an electronic system (FESC). However, the proposal will still require that these orders be entered into an electronic system (FESC) within a very short time frame (90 seconds after the execution of the respective order).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–48 and should be submitted by November 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27486 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] Telephone conference between Jeffrey Rosenstrock, Senior Special Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2002.

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). The Commission notes, however, this proposed rule change has been filed as a one-year extension of a one-year pilot. During the pilot, the NYSE will surveil the application of the exception to NYSE Rule 123(e) and submit data to the Commission for the purpose of evaluating the Rule's efficacy.

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4180]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Jemaah Islamiya (JI)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that Jemaah Islamiya has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render

ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 17, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–27502 Filed 10–28–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4153]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, November 8, 2002, from 10 a.m. to approximately 4 p.m., as necessary, in Room 1207 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss various issues related to Extraterritorial Civil and Criminal Jurisdiction, the 54th Session of the International Law Commission, the Current Status of Negotiations on the Proposed Hague Judgments Convention, Current Issues Concerning Treaties, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, November 6, 2002, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated; October 17, 2002.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Secretary, Advisory Committee on International Law, Department of State.

[FR Doc. 02–27501 Filed 10–28–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13659]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Rita C. Jackson, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5755; Fax 202–493–2288, or E-mail: *rita.jackson@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve Annual Report.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0509.

Form Numbers: MA–930.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: The Maritime Education and Training Act of l980, imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy graduate who received a Student Incentive Payment. This mandatory service obligation is for the Federal financial assistance the graduate received as a student and requires the graduate to maintain a license as an officer in the merchant marine and to report on reserve status, training, and employment for applicable periods.

Need and Use of the Information: This information collection is necessary to determine if a graduate of the U.S. Merchant Marine Academy or subsidized State maritime academy graduate is complying with the terms of the service obligation for that year.

Description of Respondents: Graduates of the U.S. Merchant Marine Academy and every subsidized State Maritime academy graduate who received a Student Incentive Payment.

Annual Responses: 2300.

Annual Burden: 1150 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: October 23, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27425 Filed 10–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 29, 2002 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0175.

Form Number: None.

Type of Review: Extension.

Title: Documents Required Aboard Private Aircraft.

Description: The documents required by Customs regulations for private

aircraft arriving from foreign countries pertain only to baggage declarations. Customs requires that the pilot present documents required by FAA to be presented upon arrival.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,490 hours.

Clearance Officer: Tracey Denning (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–27422 Filed 10–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1275.

Regulation Project Number: CO–45–91 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss Carryforwards.

Description: Section 1.382–9(d)(2)(iii) and (d)(4)(iv) allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies under section 382(1)(5). Section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulations retroactively, or revoke a prior section 382(1)(6) election.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 650.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93 Final.

Type of Review: Extension.

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

Description: These regulations establish various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (Act). The regulations provide guidance that enable taxpayers to take advantage of various benefits provided by the Act and the Internal Revenue Code.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 410,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 202,500 hours.

OMB Number: 1545–1487.

Regulation Project Number: REG–209827 and REG–111672–99 Final.

Type of Review: Extension.

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

Description: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 217.

Estimated Burden Hours Per Respondent: 11 hours, 23 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,471 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–27423 Filed 10–28–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
October 29, 2002

Part II

Department of Housing and Urban Development

Notice of FHA Accelerated Claim Disposition Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4691–N–02]

Notice of FHA Accelerated Claim Disposition Demonstration

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's establishment of the Accelerated Claim Disposition (ACD) Demonstration. Under the ACD Demonstration, HUD will pay accelerated claims on certain defaulted FHA-insured mortgages. HUD intends to select up to nine mortgagees to participate in the ACD Demonstration. The demonstration will have a limited initial duration and will include mortgage loans secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia Homeownership Centers (HOCs). At the conclusion of the demonstration, HUD will assess its success and determine whether to implement the ACD process, on a permanent basis, throughout the country. This notice follows publication of a February 5, 2002 **Federal Register** notice proposing the establishment of the ACD Demonstration, and takes into consideration the public comments received on the earlier notice.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Malone, Director, Office of Asset Sales, Room 6266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–2625 (this is not a toll-free telephone number). Hearing- and speech-impaired persons may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's February 5, 2002 Federal Register Notice

On February 5, 2002 (67 FR 5418), HUD published a notice in the **Federal Register** announcing its intent to establish the Accelerated Claim Disposition (ACD) Demonstration, and soliciting public comments on the proposal. The ACD Demonstration is authorized under section 204 of the National Housing Act (12 U.S.C. 1710), as amended by section 601 of the Fiscal Year 1999 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105–276, approved October 21, 1998) (the FY 1999 HUD Appropriations Act). Section 601 of the FY 1999 HUD Appropriations Act amended section 204 to make more effective the methods for paying insurance claims and disposing of HUD-acquired single family mortgages and properties.

Under amended section 204(a)(1)(A) of the National Housing Act, the Secretary of HUD is authorized to pay accelerated claims upon assignment of certain defaulted FHA-insured mortgage loans. Before implementing the new accelerated claim payment process authorized by amended section 204 on a nationwide basis, HUD has decided to conduct a demonstration involving a group of defaulted mortgages. The ACD Demonstration will allow HUD to assess the success of the new accelerated claim payment process and to address any programmatic concerns before authorizing its use throughout the country. Publication of the February 5, 2002 notice allowed HUD to solicit input on how the ACD Demonstration should be structured and its success evaluated.

II. Significant Changes to Proposed ACD Demonstration

This notice announces HUD's establishment of the ACD Demonstration. The notice follows publication of the February 5, 2002 notice, and takes into consideration the public comments received on the earlier notice. The most significant changes that have been made to the ACD Demonstration since publication of the February 5, 2002 notice are as follows:

A. Changes Regarding FHA Insurance Requirements

1. *Eligibility of FHA-insured mortgages on two to four-unit homes.* HUD has expanded eligibility for the ACD Demonstration to include FHA single family mortgages on one to four-unit homes. The February 5, 2002 notice limited eligibility to FHA mortgages on one-unit homes. Mortgages on two to four-unit homes have a higher risk of foreclosure, all other factors being equal. Inclusion of these mortgages in the ACD Demonstration will therefore increase the number of defaulted loans available for submission of an accelerated claim and enhance the usefulness of the ACD process for participating mortgagees. Accordingly, HUD has determined that inclusion of these mortgages in the ACD Demonstration is appropriate.

2. *FHA endorsement date.* The notice specifies that the FHA endorsement date of the mortgage loan must be prior to February 5, 2002.

3. *No pending or paid partial FHA insurance claim.* The notice provides that there must be no pending or paid partial FHA mortgage insurance claim in connection with the defaulted mortgage.

B. Changes Regarding Loan Status

1. *Minimum unpaid principal balance.* The notice provides that the mortgage must have an unpaid principal balance of no less than $20,000.

2. *Minimum length of default prior to payment of accelerated claim.* This notice clarifies that to be eligible for an accelerated claim, a mortgage must be in default for at least four full monthly installments (*i.e.*, four full mortgage payments are due and unpaid).

3. *Maximum length of default prior to payment of accelerated claim.* Related to the preceding clarification, HUD will also establish a maximum number of missed payments beyond which it will not pay an accelerated claim on a defaulted mortgage. This maximum number of missed payments will vary depending on the location of the underlying property, and will be based on the foreclosure timelines for the various jurisdictions in the Atlanta and Philadelphia Homeownership Centers (HOCs). The schedule of maximum missed mortgage payments will be provided to mortgagees prior to their agreement to participate in the ACD Demonstration.

4. *Revised loan to value requirements.* This notice provides that, to be eligible under the ACD Demonstration, a mortgage must have a loan to value ratio of 85 percent or greater, rather than the 90 percent specified in the February 5, 2002 notice. HUD has determined that a high percentage of claims meeting the lower loan to value ratio satisfy the other eligibility criteria for an accelerated claim. Revising the loan to value ratio will make more loans eligible for the ACD process, thereby increasing its usefulness for participating mortgagees and better enabling HUD to evaluate the success of the ACD Demonstration. Accordingly, HUD believes that inclusion of these mortgages in the ACD Demonstration is appropriate.

5. *Need for Broker's Price Opinion (BPO).* This notice clarifies that BPOs are not used to calculate loan eligibility for the ACD Demonstration. However, BPOs will be required for all loans for which a claim is submitted. The BPO will be made available to private sector firms who qualify to participate in a competitive bidding process to select a participant in the joint venture formed for disposition of the mortgage loans. Participating mortgagees will be reimbursed for BPOs on all loans for which a claim is submitted and paid.

6. *FICO score no longer an eligibility criterion.* This notice provides that a mortgagor's FICO score will no longer be used as an eligibility criterion under the ACD Demonstration. (FICO stands for Fair, Issac and Company—the company that has developed the mathematical formulas used to derive FICO scores.)

7. *Indemnification Agreement.* The notice provides that the mortgage loan must not be, to the knowledge of the participating mortgagee, subject to an Indemnification Agreement as of the provisional claim approval date.

C. Changes Regarding Loss Mitigation

1. *Loss mitigation evaluation.* The notice provides that, for each defaulted mortgage, the participating mortgagee (or the prior servicer of the defaulted mortgage) has evaluated all of the loss mitigation actions provided in 24 CFR 203.605 and determined that no such action is appropriate or, if appropriate, that such action has been tried and has failed.

2. *Special forbearance relief.* To be eligible under the ACD Demonstration, the mortgage loan must not be subject to special forbearance relief under 24 CFR 203.614.

D. Changes Regarding Property Securing Mortgage

1. *Exclusion of properties located in asset control areas.* This notice provides that the ACD Demonstration will exclude loans secured by properties located in asset control areas designated under section 204(h) of the National Housing Act, as added by section 602 of the FY 1999 HUD Appropriations Act.

2. *Properties seized by the United States.* The mortgage must not be secured by a property that has been seized by the U.S. Department of Justice or subject to a seizure order in connection with a drug-related case.

3. *Limit on cost of repairs.* As of the provisional claim approval date, the cost of any required repairs to the property must be less than 10% of the property's value.

E. Changes Regarding Foreclosure

1. *Foreclosure sales and deeds-in-lieu of foreclosure.* For a mortgage to be eligible for an accelerated claim, there must not have been a foreclosure sale or pre-foreclosure sale of the property, no deed-in-lieu of foreclosure has been accepted, and no foreclosure sale has been scheduled within sixty days following the claim date.

2. *Commencement of foreclosure proceedings.* If foreclosure of the property has been initiated, the foreclosure action may not have been contested in order for the defaulted mortgage to be eligible under the ACD Demonstration.

III. Discussion of the Public Comments Received on the February 5, 2002 Notice

The public comment period on the February 5, 2002 notice closed on April 8, 2002. HUD received 21 comments on the notice. Mortgage companies, legal aid providers, nonprofit housing and community development organizations, and national organizations representing mortgage bankers and realtors submitted comments. This section of the preamble presents a discussion of the most significant issues raised by the public commenters on the February 5, 2002 notice, and HUD's responses to these comments.

Comment: Participation in the ACD Process should be voluntary. Several of the commenters made this suggestion.

HUD Response: Participation in the ACD Demonstration is voluntary.

Comment: Participating mortgagees should be required to fully comply with loss mitigation processes. Some commenters expressed concern that the ACD Demonstration could result in families losing their homes if participating mortgagees do not fully utilize the existing HUD loss mitigation process.

HUD Response: The ACD Demonstration will not compromise existing loss mitigation standards and requirements. Only those mortgagees qualified in the top tier of the FHA Tiering System (which ranks mortgagees in loss mitigation use) are eligible to participate in the ACD Demonstration. Participating mortgagees must exhaust all loss mitigation options prior to submitting a claim under the ACD Demonstration. Further, HUD expects that the joint venture Manager will be motivated to avoid foreclosure and seek to restructure loans in accordance with market value and owner income.

Comment: HUD should permit use of additional risk scoring models. Several commenters suggested that participating mortgagees be allowed to use risk scoring models, other than the Freddie Mac Early Indicator Risk Scoring System, to determine the eligibility of a mortgage for an accelerated claim.

HUD Response: HUD has not adopted the change suggested by the commenters. Mortgagees participating in the ACD Demonstration are required to use the Freddie Mac Early Indicator Risk Scoring System. However, HUD will explore the use of other risk scoring models for use in the permanent ACD program.

Comment: HUD should conduct an audit before terminating FHA mortgage insurance. One commenter suggested that HUD conduct pre-claim audits to ensure the eligibility of a loan for an accelerated claim prior to termination of FHA insurance. Alternatively, the commenter suggested that HUD conduct a post-claim audit but not terminate FHA insurance until the audit is complete.

HUD Response. HUD has not adopted the change requested by the commenter. The ACD Demonstration will contain several safeguards to ensure that a defaulted loan qualifies for payment of an accelerated claim. Participating mortgagees are required to assure that loans meet the eligibility criteria for an accelerated claim. HUD will also review the eligibility of defaulted loans during the pre-claim process and notify the participating mortgagees of provisional approval or disapproval of the submitted loans. FHA mortgage insurance will be terminated upon payment of the claim.

Comment: Will FHA insurance be restored for a mortgage loan reassigned to the participating mortgagee? One commenter asked this question.

HUD Response. If the FHA insurance was valid prior to submittal of the accelerated claim, HUD will reinstate the mortgage insurance after reassignment of the loan to the participating mortgagee.

Comment: ACD Demonstration should take into consideration other community revitalization and affordable housing programs and initiatives. One commenter made this suggestion. The commenter was particularly concerned about the potential impacts of the ACD Demonstration on the program for the disposition of HUD-owned single family assets in asset control areas authorized by section 602 of the FY 1999 HUD Appropriations Act.

HUD Response. HUD agrees and has revised the ACD Demonstration in response to the concerns expressed by the commenter. Specifically, the ACD Demonstration will not include any mortgages secured by a property located within an asset control area.

Comment: Objection to use of BPO in calculating loan to value ratio. Several commenters objected to the use of a BPO in calculating the loan to value ratio of the defaulted mortgage. The commenters suggested that HUD reimburse mortgagees for the cost of the BPO, or permit the use of an Automated Valuation Model (AVM) analysis to determine the value of the property.

HUD Response. BPOs are not used to calculate the loan to value ratios to determine eligibility for the ACD

Demonstration. Loan to value ratios will be determined using the original appraisal or, if none is available, the original principal balance of the mortgage. However, BPOs will be required for all loans for which a claim is submitted, and made available to bidders qualifying for participation in the joint venture. Participating mortgagees will be reimbursed for BPOs on all loans for which a claim is submitted and paid.

Comment: FICO score should not be used in determining loan eligibility. One commenter suggested that HUD eliminate some of the specific loan eligibility criteria during the demonstration period, and specifically suggested the removal of the FICO score requirement.

HUD Response. HUD will not use the FICO score eligibility criterion during this demonstration period. The FICO score requirement is being removed both in response to the public comments and because the requirement overlapped with other eligibility criteria.

Comment: Loans should be in default for longer than three months to qualify for the ACD process. Several commenters suggested that HUD extend the three-month period that a loan must be default to qualify for payment of an accelerated claim.

HUD Response. In response to these comments, this notice clarifies that HUD will not pay an accelerated claim until an eligible mortgage is in default for at least four full monthly installments (*i.e.*, four full mortgage payments are due and unpaid). Further, HUD will also establish a maximum number of missed payments beyond which it will not pay an accelerated claim on a defaulted mortgage. This maximum number of missed payments will vary depending on the location of the underlying property, and will be based on the foreclosure timelines for the various states located within the jurisdictions of the Atlanta and Philadelphia HOCs. The schedule of maximum missed mortgage payments will be provided to mortgagees prior to their agreement to participate in the ACD Demonstration.

Comment: Accelerated claim amount should be based on the mortgage note interest rate. Several commenters wrote that HUD should base the amount of the accelerated claim on the mortgage note rate of interest (rather than on the debenture rate). The commenters also suggested that the amount of the claim be calculated from the date of the last paid installment rather than from the date of default.

HUD Response. HUD is statutorily required to pay insurance claims based on the debenture rate from the date of default.

Comment: Submission of a Mortgage Insurance Certificate (MIC) should not be required for payment of an accelerated claim. A few commenters opposed requiring the submission of a paper MIC as part of the claim submission process.

HUD Response. HUD has eliminated the submission of an MIC as a prerequisite for the payment of an accelerated claim. For claim payment under the ACD Demonstration, HUD will rely on representations and information provided by participating mortgagees (including a screen print-out from the FHA Connection portfolio screen verifying mortgagee identification number, property address and current holder) as well as internal information to determine insurance status. Participating mortgagees will, however, be required to submit the MIC with the collateral files (and obtain a duplicate original MIC if the original MIC is missing) following claim submission. Mortgagees will continue to be required to submit the original or a duplicate MIC as a prerequisite to submitting a conveyance or other disposition claim for FHA single family mortgage insurance benefits.

Comment: Factors for consideration in evaluating the success of the ACD Demonstration. Several commenters submitted helpful recommendations regarding the factors HUD should consider in evaluating the success of the ACD Demonstration.

HUD Response. HUD appreciates all of the suggestions made by these commenters. HUD will consider all of these comments in determining the criteria for evaluating the ACD Demonstration. A summary of the results of the evaluation will be published in the **Federal Register**.

IV. Overview of the ACD Demonstration

A. Duration

The ACD Demonstration will have a limited duration. HUD may extend the duration of the demonstration in order to accurately assess its effectiveness.

B. Geographic Scope

The demonstration will initially include mortgages secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia HOCs. HUD may decide at a future date to expand the scope of the ACD Demonstration to include one or more additional HOCs.

The Philadelphia HOC serves Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

The Atlanta HOC serves Alabama, Florida, Georgia, Kentucky, Illinois, Indiana, Mississippi, North Carolina, South Carolina, and Tennessee, as well as the Caribbean.

C. Participating Mortgagees

Mortgagee participation in the ACD Demonstration is voluntary. HUD will select up to 9 eligible mortgagees to participate in the ACD Demonstration. In order to be selected for participation in the ACD Demonstration, a mortgagee must satisfy all of the following criteria:

1. *Number of serviced loans.* The mortgagee must currently service in excess of 20,000 mortgage loans secured by properties that are located within the jurisdiction of the Philadelphia or Atlanta HOCs.

2. *Loss mitigation performance.* The mortgagee must be qualified in the top tier of the FHA Tiering System, which ranks mortgagees in loss mitigation use. The FHA Tiering System was developed by HUD's National Servicing and Loss Mitigation Center and is subject to future refinement.

3. *Computer system capabilities.* The mortgagee must have the technical capability to interface with the FHA Single Family Claims system, through the internet (using the FHA Connection System) and using Electronic Data Interchange (EDI) technology. In addition, the mortgagee must have the technical capability to interface with any other computer systems utilized by FHA or its contractors pertaining to the ACD Demonstration.

4. *Use of the Freddie Mac Early Indicator Risk Scoring System.* The mortgagee must have the ability to run risk scoring models using the Freddie Mac Early Indicator Risk Scoring software program.

5. *Other criteria.* The mortgagee will be required to meet any additional criteria that HUD may establish regarding the eligibility of mortgagees for participation in the ACD Demonstration.

D. Eligible Loans

Only certain defaulted FHA-insured loans are eligible for the accelerated claim payment process. To be eligible for payment of an accelerated claim, the defaulted mortgage must meet the following criteria:

1. FHA Insurance

(a) The mortgage is an FHA-insured single family mortgage loan on a one-to four-unit home.

(b) The mortgage loan is an actively insured by FHA under either section 203(b) or 234 of the National Housing Act (12 U.S.C. 1709(b) and 1715y).

(c) The FHA endorsement date of the mortgage is prior to February 5, 2002.

(d) There is no pending or paid partial FHA mortgage insurance claim in connection with the mortgage.

2. Loan Status

(a) The mortgage loan has an unpaid principal balance of no less than $20,000.

(b) The mortgage must be in default for at least four full monthly installments (*i.e.*, four full mortgage payments are due and unpaid). However, the number of missed monthly installments on the mortgage as of the provisional approval date may not exceed the maximum number allowed by HUD for the jurisdiction in which the property securing the mortgage is located.

(c) The mortgage has a loan to value ratio of 85 percent or greater. The loan to value ratio represents the relationship between the amount of the mortgage loan and the value of the real estate. The loan to value ratio is to be determined using the original appraisal or, if none is available, the original principal balance of the mortgage loan.

(d) The mortgage must have received a score of D, E, or F on the Freddie Mac Early Indicator Risk Scoring software system.

(e) To the knowledge of the participating mortgagee, the mortgage loan is not subject to an Indemnification Agreement as of the provisional claim approval date.

4. Property Securing Mortgage

(a) The mortgage must be secured by a property located within the jurisdiction of HUD's Philadelphia, Pennsylvania or Atlanta, Georgia HOCs. However, the property must not be located in an asset control area designated under section 204(h) of the National Housing Act as added by section 602 of the FY 1999 HUD Appropriations Act.

(b) The mortgage must not be secured by a property that has been seized by the U.S. Department of Justice or otherwise subject to a seizure order in connection with a drug-related case.

(c) As of the provisional claim approval date, the cost of any required repairs to the property must be less than 10% of the property's value.

5. Foreclosure

(a) No foreclosure sale of the property has been scheduled within the sixty (60) day period after the claim date, there has been no foreclosure sale or pre-foreclosure sale, and no deed-in-lieu of foreclosure has been accepted.

(b) If the first step required under applicable law to initiate a foreclosure of the property has been taken, the foreclosure action has not been contested.

6. Other Eligibility Requirements

The mortgage must meet any additional criteria that HUD may establish regarding the eligibility of defaulted mortgage loans for an accelerated claim under the ACD Demonstration.

E. Risk Scoring

At the 90th day of delinquency, mortgagees participating in the ACD Demonstration will be required to begin running scoring models using the Freddie Mac Early Indicator Risk Scoring System to confirm the eligibility of the mortgage for payment of an accelerated claim. Provided that the mortgage meets the eligibility criteria described in paragraph. IV.D. of this notice, participating mortgagees will have the option to submit an accelerated claim.

F. Disposition Methods

HUD will use one or both of the following disposition methods under the ACD Demonstration. HUD, in its sole discretion, will determine which of the two disposition methods to use for particular mortgages under the demonstration.

1. *Joint Venture.* The joint venture method will be the primary disposition method used under the ACD Demonstration. Under this disposition method, HUD will sell a majority interest in a public/private joint venture formed to acquire, service and dispose of the mortgage loans submitted under the ACD Demonstration. The private sector entity will be selected through a competitive bid process and will serve as the Manager of the joint venture. The joint venture Manager will receive a percentage of the net cashflow from the joint venture derived from the eligible mortgages submitted by mortgagees participating in the ACD Demonstration. The private sector joint venture Manager will be responsible for maximizing the value of each mortgage loan asset through re-performance, refinancing, workout, foreclosure and/or disposition. HUD expects the joint venture Manager to conduct its operations in a manner consistent with applicable FHA and industry standards for integrity and avoidance of predatory lending practices.

Private sector firms that pre-qualify will be given the opportunity to bid at a competitive auction to be the joint venture Manager. To qualify, bidders must be adequately capitalized and must meet other FHA standards for loan servicing, experience and integrity. Before bidding, investors will be required to make a security deposit with HUD.

2. *Other disposition methods may be used.* HUD may also consider using the special servicing disposition method or other disposition methods under later subsequent demonstrations. The ACD Demonstration will not initially use this method, and HUD may decide not to use this disposition method at all during the course of the demonstration. Under this disposition method, servicing of the mortgage may be transferred to a special servicer. The special servicer may provide assistance to HUD in undertaking one or more of the following actions: (a) Foreclosing and selling the properties; (b) accumulating mortgages for a whole loan sale; and/or (c) accumulating mortgages for disposition in a securitization.

V. Evaluating the Success of the ACD Demonstration

At the conclusion of the ACD Demonstration, HUD will assess its success and determine whether to implement the ACD process on a permanent basis throughout the country. In conducting this evaluation, HUD will assess such factors as whether the use of the ACD process will: (1) reduce loss rates; (2) reduce the cost and time associated with claim dispositions; and (3) enhance the ability of HUD to assess risk and manage the FHA mortgage insurance fund.

VI. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared for the February 5, 2002 notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact remains applicable to this notice and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Dated: October 23, 2002.

Sean Cassidy,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–27559 Filed 10–28–02; 8:45 am]

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